

THE ct
PRACTICK PART
OF THE
LAW:

Shewing the Office of a
COMPLEAT ATTORNEY,
In the full prosecution of any Acti-
on, whether Reall, Personall, or Mixt ;
(from the very Original to the Execu-
tion) in all Courts; With the exact fees
of all Officers and Ministers of the Courts :

TOGETHER

With speciall Instructions for the Solici-
tation of any Cause in Chancery, or
elsewhere, relating to the present Go-
vernment ; being usefull for all men.

The fifth Impression, corrected and amended ; With an
exact Table, wherein are contained all the Principall
matters in the whole Book.

L O N D O N,

Printed by *Tho. Roycroft*, for *H. Twyford*,
and are to be sold at his Shop in *Vine-
Court, Middle-Temple.* 1658.

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JUN 29 1926



TO THE
READER.

Reader,

HAVING observed the many
Errours daily committed
through the mistake of the
nature of the Action to be
sued, and consequently, as
well the misgrounding of the Action, as
the undue prosecution thereof, to the utter
losse of many a Cause, hath put my intenti-
ons on work to give thee some light in such
waies, where either thou dost voluntarily
go to pursue thy right, or art involuntarily
driven to defend thy right: To that pur-
pose was this Composure undertaken, where-

The Epistle.

in thou shalt finde the whole progresse of the Law in the Practicall part : So that whether thou hast businesse of thine own, or on the behalf of another, here, upon all occasions, thou mayest finde Instructions for a due and full prosecution thereof ; there being scarce any Actions, Reall, Personall, or Mixt, in what Court soever, but its Nature, Progresse, Judgment, and Execution is here explained, with the duty of all Officers, Judiciary and Ministeriall ; as also the justifiable Fees and Allowances of the Prothonotaries, Masters of Offices, Secondaries, Clerks, Attorneys, Sheriffs, Under-Sheriffs, Bayliffs of Franchises, and prescribed Liberties, the Practice of the High Court of Chancery, the Fees of the Six Clerks, &c. All which being methodically disposed, with an exact Table to every particular, will, I hope, render thee a benefit worthy of thy kinde acceptance.

Farwell.



The one is to be gained out of the body of the Law, and cannot be expected to be ascertained in this small tract.

The C. P. hath been a Court *temps deut memory*, &c.
2. [ult. 22.

In *Edw.* 3. time there were 9. Justices at once, in *K. Johns* time. 6. in *E. 1.* there were 5.

The *Custos Brevium*, or Keeper of the Writs.

處

Thres

The Compleat Attorney.

Three Prothonotaries (one of which was antiently incident to the *Custos Brevium* for the time being) who by themselves and their Clerks, draw all pleadings and enter them, and exemplifie and record all common Recoveries.

The clerk of the Warrants, who entreth all Warrants of Attorney, and inrolleth all deeds acknowledged before the Justices of the Court.

Philixers, who make all manner of mean processe upon originall Writs before appearance.

The Clarke of the Eſsoynes, who doth enter the Eſsoynes and exceptions in all actions wherein Eſsoines lye, and prepareth and marketh all the Rolls used for the court.

The clerk of the Outlawries who maketh the *Capias utlegatum*, upon the return of the exigents brought in unto them: This Office is properly incident to the Attorney Generall for the time being.

The clerk of the Superſedeas, who makes Writs to superſede the Outlawing of persons, granted by Letters Patens under the great Seal of England.

The Exigenters, who are in number, and make the Writs of Exigents and Proclamations, in order to Outlawry upon the *plures capias*, brought in unto them.

The clerk of the Juries, who makes the Writs of *Habeas corpora* and *Distingas Iur.* for the tryall of Issues.

The Chyrographer, who doth make the Indentures of Fines levyed, and hath many subordinate Clerks for the severall Counties where the Lands lie.

The Clark of the Kings-silver, so antiently called, who doth enter on record the Money which the State is to have upon Fines, for the Post-Fines, according to the yearly value of the Land as the same is rated on the Writs of Covenant.

The

The clerk of the Errors, who makes all *Superjeda-* as's upon Writs of Errour, and doth transcribe the Records out of the Treasury, belonging to the Common Bench into the Upper Bench.

The Keeper of the Treasury, who hath the keeping of the Rolls entered of Record in the Court, and the making forth of Copies and Exemplifications thereof, and also of records of *Nisi-prins*.

The Proclamator of the Court; the Keeper of the Court; The Office of the Inrollment of Fines and Recoveries erected by Statute.

Four Cryers, or Tipstaves, Substitutes of the Proclamator.

The Warden of the Fleet, who by himselfe or his Deputy is to attend the Court, that Prison being proper for all Commitments out of that Court.

The Pleaders are all Sergeants of the Coise, none under that degree being allowed to plead in that Court.

The Attorneys are very many, being not limited to any set number; and were such as either had studied the Law for some years in some Inne of *Chancery*, where was usually their residence, or had served for the space of 6. or 7. years, with some able Attorney of the Court, whereby they come to be very knowing in the Practise of the Court, the better to mannage their Clients causes with ability and integrity, to the honour of the Court, and their owne credit.

Anciently they were limited as appears in 20 E. 1. and 71. and by the records in the Tower of 20. E. 4. sult septies viginti, vi: Seldens Notes on Fortescue. 3.

At the time of their being admitted Attorneys, there is an Oath administred unto them as followes.

You shall doe no falshood, nor consent to any to be done in the Court; and if you know of any so be done,

B 2

you

The Complaint Attorney.

You shall give knowledg thereof to my Lord Cheif Iustice, or other his Brethren; that it may be reformed. You shall delay no man for lucre or malice, nor shall encrease no fees, but be contented with the old accustomed fees, You shall plead no forreign plea, nor sue no forreign suite^s unlawfully to hurt any man, but such as shall stand with the order of the law and your Conscience. You shall seale all such Proceffe as you shall sue out of this Court, with the Seale thereof, and see the Kings Majestie, and my Lord cheife Iustice discharged of the same. You shall not wittingly nor willingly sue, nor procure to be sued, any false suite, nor give aid or consent to the same, on paine of being expulsed from the Court for ever. And further you shall use your selfe in the Office of an Attorney within the Court according to your learning and discretion, so helpe you God.

Having taken his Oath, he is to pay the fees of Court incident thereunto, as followes,

Imptimis, to the Judges box, 20 s.

To the Secondary of the Cheife Prothonotary, who giveth the Oath, 12 d.

To the Cryers, Court-keeper, and other Officers 11 s.

Then must he have a note from the Prothonotary, in whose Office he intends to enter, directed to the Clark of the Warrants, which is usually made, as follows.

Of the Term of St. *Hilary* in the year, 1651.

T. D. Gent. sworn in Court the 10 day of *February*, in the selfe same Term, in the Office of Attorney of the Common-wealth of the Common Bench.

To which the Prothonotary subscribeth his name.

Which note being delivered to the Clark of the Warrants, he enters the name into the Roll of the Attorneys names.

The

The Compleat Attorney.

The Clark of the Warrants hath for the entering thereof 4 s. and 4 d. and for the Roll of that Terme, 4 d.

And so he stands charged to pay 4 d. for the future; so long as he continueth an Attorney of the Court for each Term.

The Attorney thus fitted for practise, he must be very carefull in taking right and due instruction from his Client; and informe himselfe of whatsoever is materially incident to his Cause; that so he may know what manner of Action is most proper to be brought on the behalfe of his Client; for a Cause once thoroughly weighed, and rightly grounded, goes on with a great deale of ease and satisfaction, both to the Attorney and Client.

The Attorney ought to be thoroughly versed in the nature of all sorts of Writs, as in the Register, Terms of the Law, and other Books now extant.

To begin with Actions of Debt.

First, you are to take notice of your Plaintiffs name, and of his cause of Action, whether it arise by Bond, or Bill, which are called Specialties; and otherwise for arrears of Rent, Wares, Cattell sold, or any other Chattels, or for worke or service done, &c. If by Bond, or Bill, you must take an exact note of the Defendants name, together with his addition precisely, as he is written in the Obligation or Bill, that so you may make your Originall and your other processe to agree with the Obligation, otherwise it is Error.

That done you must make a short note to the Curstitor, if in debt, as follows;

London. ss. Command T. C. late of London. Gent. other wise called I. C. of L. in the County of H. Gent. that justly, and so forth, he render T. B. 40 l. &c. Original returnable 15. dayes after Easter.

Which being done, you must carry your note or notes to the Curitors Office, and deliver it to that particular Curitor, who is for the County you lay your Action in, who maketh your Originall, and delivereth it you under Seale.

This Originall is your first Processe, and is a Summons: and although it issue out of the *Chancery*, yet it is made returnable before the Justices of the *Common Pleas* at a certaine return: And between the Teste and return of the same (as also in all other ordinary Writs to be sued forth, and procured upon the same) must be 15. daies at the least.

Note, that this Writ may bear Teste out of the Term, because it is to be understood that the Court of *Chancery* is alwaies open.

All other Processe sued forth at the court of *Common Pleas*, must beare Teste sometime within the Term, and in the name of the cheif Justice of the same court for the time being, and one writ is to beare Teste from the return of another, as namely the *Capias* (which is the next Writ to the Originall in an action of Debt) from the return of the Originall, the *Alias capias*, from the return of the *Capias*, and the *Plures* from the return of the *Alias*, and the Exigent and Proclamation from the return of the *Plures*; and these are the severall Writs in order to an Outlawry.

1. before the conquest and a good while after none could have been Utlawed but for felony. *Mirr. cap. 1. 5. 3.*

2. In Bractones time, and somewhat before the Judges resolved that proces of Utlary should lye in all Actions that were vi & armis Bract. lib. 5. 421.

3. By the stat. 10. 2. proces of Utlary lyes in attempt.

4. By the stat. 25. E. 3. cap. 17. proces of Utlary lyes in debt, detinue and Replevin.

5. By

5. By the stat. 19. H. 7. 9. the like proces in case as in trespass.

For covenant vide stat. 23. H 8. ca. 14:

6. The return of your Originall in debt is thus ;

Pledges of prosecuting } *John Doe.*
 Richard Roe.

If there be no pledges returned upon the originall you may plead in abatement j. d.

The within named *I. S.* hath nothing within our Bayliwick whereby he may be summoned.

The answer of *R. B.* and
I. S. Sheriffs.

If there be two Defendants in the Originall, the return must be thus :

The within named *I. C.* and *D. L.* have nothing within our Bayliwick wherby they may be summoned. If there be more then two Defendants, then thus : *I. C.* and the rest of the Defendants within written, have nothing within our Bayliwick whereby they may be summoned.

Note. it is said (within our Bayliwick) because the action lies in *London*, where there are two Sheriffs, otherwise where there is but one Sheriff, you say (within my Bayliwick) and the like for all other cities that have two Sheriffs, and likewise the words, (the answer of) are intended onely where there is two Sheriffs, otherwise you barely recite the Sheriffs name and stile at the bottome of the back of the Writ.

Your Originall being thus made and returned, you must deliver the same to the Philizer of the county, city, or shire, where your action is laid, to have such further processe made thereon, either in suing to the Outlawry or otherwise, as the present Term wherein you sue forth the same ; shall by reason of the length or shortnesse of the time allow, observing the former rule

of fifteen daies betwixt the Teste and the return of every Procelse.

The ordinary and usuall procelse thereupon with the Philizer, are those formerly mentioned which he maketh upon the Originall Writ brought to him, for which you deliver him 4 d. as payable to the *Custos breuium* for filing the Originall.

First, A *Capias*, for which you pay 10. d.

Secondly, An *Alias Capias* which costs 6. d.

Thirdly, A *Plures capias* for which you pay 6. d.

The returns whereof are as followes.

The within named *I. C.* is not found within our Bayliwick.

And if more then two defendants, then thus.

I. C. and the rest of the Defendants within written are not found within our Bayliwick.

The answer of R. B. and J. S. Sheriffs.

BUT if you intend not to sue the Defendant to an outlawry but that his body may be easily and readily arrested, then you need not proceed further then to the *Capias* onely, and deliver the same to the Under-Sheriff of the County, and procure a Warrant thereupon, and get him arrested by the Sheriffs Bayliffs, which is a great furtherance to your Clients cause, in relation to Trial, and procuring Judgement.

Note that you are to pay 4 d. as a *post-diem* for each of the aforesaid Procelse, which you bring not into the Philizer by the day of the return.

The two cheife Termes wherein to commence Suits to the Outlawry, are *Easter* and *Michaelmas* Termes, they having in them the most returns, for if you begin in *Easter*, you shall Outlaw the party, if he appear not in *Michaelmas* Terme next following, and if you begin in *Michaelmas* Terme, you shall doe
the

the like in *Easter* or *Trinity Terme* then next following.

Note that you may have an Originall Writ made returnable of a precedent Terme, upon bringing a Note to the Courſitor within ſeven dayes after the Terme begun but if you ſlack the time you looſe your advantage.

Anciently the courſe hath been, that if an Originall Writ be made againſt a Knight, Eſquire, Gentleman of worth, or other ſubſtantiall Free-holder, that hath ſufficient Lands and Tenements in the ſame County where the Action is laid then ought a Summons to be returned by the Sheriff of the County, who is to execute it: And you cannot return that Originall of Courſe by the return of (having nothing, &c.) For otherwiſe the Defendant, if he have ſufficient in the ſame County, and he be returned, (to have nothing, &c.) may bring an Action of the Caſe, for diſabling of him in his Eſtate, againſt the Attorney for the Plaintiff, or againſt the Under-Sheriff of the County, who ſhall make ſuch return, to diſable him upon a Summons; if he appear not, you proceed by *Pone*, and ſo to a diſtreſſe, and if he appear not upon the *Diſtringas*, you have an *Alias diſtringas*, and ſo diſtreſſe upon diſtreſſe, untill he appeare; but this manner of proceedings by way of Summons hath not been uſed of late.

Formerly Upon the making and ſuing forth of the Originall Writ, if the debt of dammages therein ſpecified did exceed forty pounds: Then there was a certain Fine due for the ſame, to be paid formerly to the King, now to the State as followes;

Imprimis, from forty pounds to a hundred marks,

paies 6 s. 8 d.

From a hundred marks to a hundred pounds, paies

10 s. 0.

From

From a hundred pounds to two hundred marks,
paies 13 s. 4 d.

From a hundred thirty three pounds six shillings
and eight pence, to a hundred sixty six pounds
thirteen shillings and four pence, paies 16 s. 4 d.

From a hundred sixty six pounds thirteen shil-
lings and four pence, to two hundred pounds
paies 20 s. 0.

And so consequently for every hundred marks
more, paies, 6 s. 8 d.

And for every hundred pounds more, paies
10 s. 0.

These Fines are taken a way by the Act of Parliament
dated 2. Aug. 1653.

If you begin in *Easter* Term, you may procure your
Capias and *Alias capias*, returnable in *Trinity* Term,
and in *Trinity* Term sue forth your *Plures capias*,
Exigent, and Proclamation; if in *Michaelmas* Term,
you may sue forth the original *Capias*, and *Alias ca-
pias* returnable the same Term; and a *Plures capias* re-
turnable in *Hillary* Term then next following, and in the
same Term procure your *Exigent* and Proclamation.

Note, that if you lay your action in *London*, the
party will be the sooner outlawed, in respect of the
Hustinge, being oftener there then elsewhere.

Now if the party have sued out his Originall in
London, and the party live elsewhere, and that
he should have him more speedily arrested then by way
of Outlawry upon the return (of the parties not being
found, &c.) by the Sheriff, he may have a *Testatum* in-
to the county where he liveth, to arrest him there; the
fee of which Writ is twelve-pence.

All the Writs before mentioned must be filed with
the *Custos brevium*, either by your selfe or the Philiz-
er, or else there will be Errour in the proceedings.

The *Plures Capias* being orderly procured, sued
forth

forth and returned, must be delivered to the Exigenter of the county where the action is laid, and he will make an Exigent, and proclamation thereupon.

The Exigent and Proclamation must be delivered to the under-Sheriff of the same county where the Defendant dwelleth, to be executed according to the forme of a Statute, in that case made and provided, and according to the tenure and form of the said Writ.

Three proclamations shall be made in every action personall wherein any Writ of exigent shall be awarded by the stat. 31. *Elix.* cap. 3. *vix.* one in the county court, one at quarter Sessions, and one, a moneth before the quint exact. at the church door where the partie lives.

And before this stat, by the stat of 4. *Henry* 8. 4. and 6. *Henry* 8. 4. proclamations were awarded, where the party did not live in the same county where the action was laid.

The charges of a Suit to the Outlawry are as followeth.

Do
against }
Rec.

Easter Term, 1651.

l. s. d.

For the Fine to the State,	0-10-0	} f. d. 17-11
For the Original, <i>Post diem</i> , and Entry,	0-1-5	
For the <i>Capias</i> , Seale and <i>Post diem</i> ,	0-1-9	
For the <i>Alias capias</i> , Seal, & <i>Post diem</i> ,	0-1-5	
For the Attorneys fee,	0-3-4	

Trinity Term following.

l. s. d.

For the <i>Plures capias</i> , Seale and <i>Post diem</i> .	0-1-5	} For
For the Warrant of Attorney,	0-0-4	

For the Exigent and Seale	0-1-7
For the return thereof,	0-1-0
For the Attorneys fee,	0-3-4
For the proclamation and seale	0-1-1

The exigent is 4 *d.* a name, and the returne of the proclamation is 1 *d.* this last *per stat.* of 31. *Eliz.* cap.

3.

The Philizer hath 6 *d.* for the proclamation : *per stat.* 6. *H.* 8. cap. 4.

If the Exigent be against severall Defendants living in severall Counties, severall Proclamations must go to the Sheriff of the severall Counties, which will increase the charge: And further take notice there must be of necessity five county-daies, between the Test and the returne of the Exigent, or else you must be necessitated to sue forth another Writ, called an *Allocatus*, from the said Exigenter, to be delivered to the said Under-sheriff, to the great hinderance and charge of the client; and your *Allocatus* must beare Teste with the return of your former Exigent, and be returnable the next return, after the fifth county-day and your Exigent and Proclamation must have one and the same Teste and return.

You must carefully examine all the aforesaid Processes, that there be no difference or variance either, in the summes, names, or additions, from your Originall Writ, that so they may each warrant the other.

The same Term that you sue forth your Exigent and Proclamation, you must then file a Warrant of Attorney (for the Plaintiff who is your client) with the clark of the Warrants, in failer whereof you commit manifest Error in the prosecution of your cause, to the great hinderance and hurt of your Client, and danger of your selfe, by incurring the forfeiture

forfeiture of ten pounds, by a Statute made in that behalf.

The forme of a Warrant of Attorney is as followes, and must be ingrossed in Parchment.

London *ß.* *A. B.* puts in his place *C. D.* his Attorney, against *T. F.* lately of *London* Gentleman, otherwise called *T. F.* of *S.* in the Countie of *Glocester*, Gentleman, of a Plea of Debt: Thus upon specialtie.

In Action of Trespasse thus.

Dorset *ß.* *G. W.* puts in his place *T. F.* against *I. L.* late of *Blanford* in the County aforesaid, of a plea of Trespasse and the like in other Actions.

The Exigent and Proclamation being returned, you must then file the Proclamation with the *Custos Brevium*, and if you file the same or any other Writ there, before the return be past, or upon the return day, then you must pay nothing for filing the same; otherwise every writ payes 4 *d.*

Well-experienced Practisers know how to save many of their *post diems*, by having their writs made ready in an early manner.

In case of not filing your Writ or Writs, in or of the same Term they are returnable, they force you to pay when you file them with the *Custos Brevium*, for the Post *Terminum* of them, which is 20 *d.* for every Writ, every Term the same is unfiled, except Exigents, for which you pay onely one Post *Terminum*, which as aforesaid, is 20 *d.*

It is very unsafe in relation both to your selfe and Client, to keep your Writs unfiled (the filing of them being the substantiall warranty for the proceedings had upon them) least a Caveat be obtained from
from

some of the Judges in that behalf, which is called a *Ne recipiatur*.

The Exigent being returned by the Sheriff of the County, and you being willing to procure proceſſe of Outlawry againſt the Defendant to Arreſt him, upon the ſame he being outlawed, you muſt then carry the Exigent ſo returned, to the Clark of the outlawryes, for the time being, and he will make you a Writ or writs, into any County you ſhall deſire him, where you can any wayes diſcover the Party to be, or any Eſtate of his, either in Lands or Goods, yea into ſeverall Counties at one time; becauſe thoſe writs are as well on the behalfe of the King, as for the Plaintiff.

There be two ſeverall writs of *Capias Viſlegat*. the one called a Generall *Capias Viſlegatum*, being for the apprehending of the body of the Defendant only: The other eſpeciall, being againſt his bdy, Lands, and Goods.

You having now the Exigent in your hands, ready to file, I thought fit to let you know the accuſtomed Fees for ſuing the Outlawry out, and Proceſſe thereon.

The Fees of the *Capias Viſlegat*.

THE filing of the Exigent with the Clark of the Outlawries in the ſame Terme it is returnable,

	payes 1 d.
If it be with a <i>poſt Terminum</i>	payes 20 d.
The Generall <i>Capias Viſlegat</i> .	payes 10 d.
The Speciall	payes 2 s. 4 d.
The Seale of either	payes 1 d.
The fee of the Attorney ſuing it forth;	3 s. 4 d.

Severall ways there are to diſcharge and avoid the ſame as occaſion ſerves, whether the party be taken or otherwiſe.

The firſt and moſt uſuall way is, to reverſe by Error,

ror, found in the returne of the Exigent, which may be committed many wayes, and is not unfrequent, either by mistaking the County-dayes, in not allowing sufficient time between any of them, or in misnaming of the person, or omitting, or mistaking of the Sheriffs name to the same Writ or Returne, or by words which will bear no signification, or otherwise as Experience and Practise will better instruct you: And secondly by any Error to be found in the Return of the Proclamation, which may be committed many wayes, as aforesaid.

Likewise for want of filing the Proclamation with the *Custos Brevium*, as also for want either of the Return or a due Return or Mis-entry, or mistakes, either in the Originall *Capias*, *Alias*, and *Plures*, aforescited.

This by the stat. 31 *Eliz.* cap. 3.

For all which there must be diligent search with the *Custos Brevium*, or in the other Offices where the proceedings have been.

Upon the finding of any sufficient Error, either in those or any other the proceedings: Then the file of Writs, in which the said matter of Error in Writ is filed, must be brought by the *Custos Brevium* into the open Court, there to be seen and perused by one of the Judges of the same Court, and the Errors to be allowed, or disallowed, according to his discretion and Judgment.

This by the stat. 31. *Eliz.* cap. 3:

Upon Reverfall of an Outlawry for want of Proclamation in all cases, or for any other default, if the debt or damage amount to 20 *l.* or above, there must be speciall Bayle entred by the Defendant with Sureties to answer to the Plaintiffs suite, and pay the debt and damage demanded, or yeeld his body to Prison, if the Defendant shall be condemned in the

Action

Action, which Baile must be taken out into the Remembrance in the same Prothonotaries officie, where the same is reversed. And then if the party outlawed be taken, and arrested, or feare to be so upon notice of an Exigent against him, he may have a Writ of *Superfedeas* directed to the Sheriff of the County where he is, or feareth to be taken, for his discharge, which writ is to be made and signed in the same Prothonotaries Office where the Outlawry was reversed.

The Outlawry thus reversed, the Defendant is bound by his Attorney to appeare, and to accept of a Declaration at any time within two Terms then next following after the said reversall, and then to answer according to course of Law.

Upon the reversall of every Outlawry, the Attorney ought to have a note or Certificate thereof from the Prothonotary to the Clark of the Outlawryes, that no further Procelle may be made against the Defendant upon the same, and to see the Outlawry Book discharged, for which he must pay

2 s. 8 d.

The Fees of the reversalls according to the occasions are uncertaine; but the usuall and accustomed fees follow.

For search and Copie of the Outlawry, 8 d.

For search with the *Custos Brevium* for every particular Term you need to use, 5 d.

For carrying the bundle of Writs to the Hall,

2 s. 9 d.

For putting in the Bayle.

6 s. 4 d.

To the Box.

1 s.

To the Prothonotary for entring the Reversal upon insufficiency of the Return,

8 s.

For the Judges Fee,

4 s.

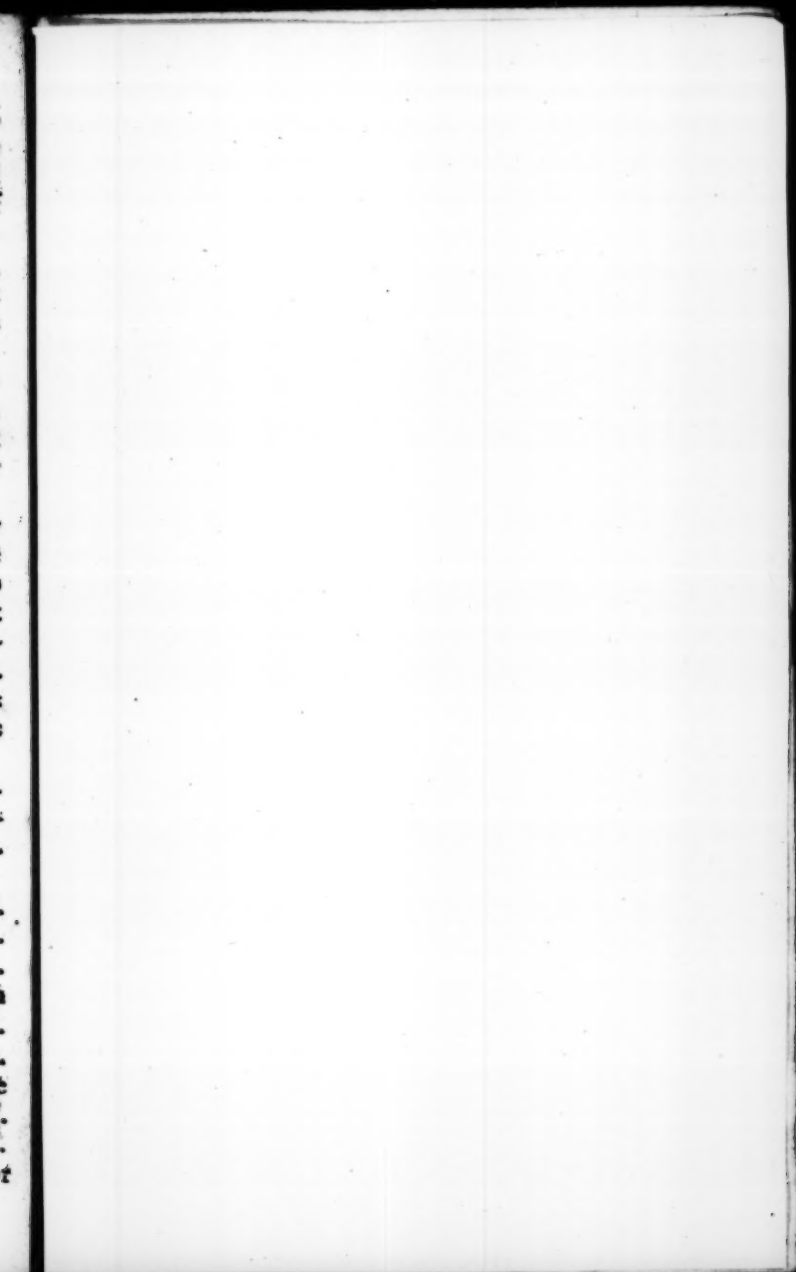
To the Clark of the Outlawries for discharging the Book,

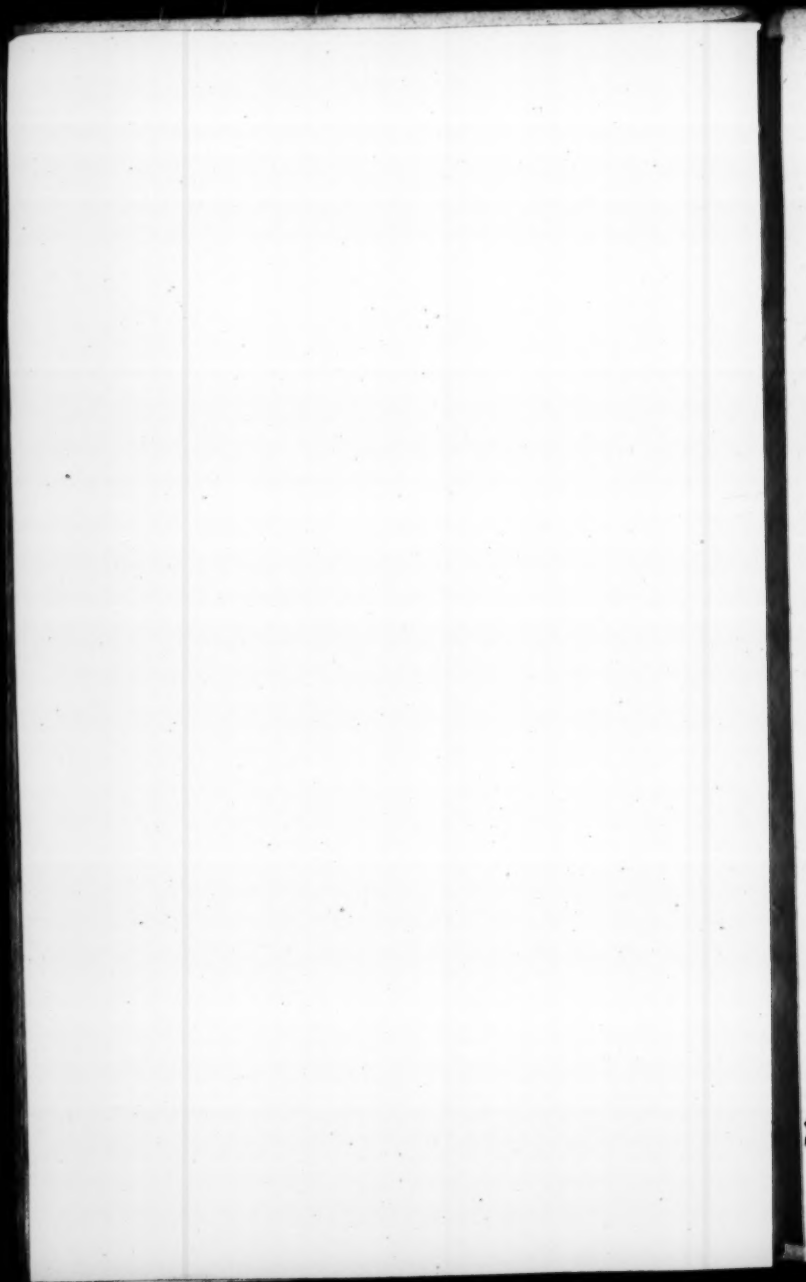
3 s. 6 d.

For the *Superfedeas*,

2 s. 7 d.

For





For the allowing thereof with the Sheriff, 2 s. 4 d.

This is by the statute of 1. Henry 5. cap. 5.

And the addition of the estate degree or Mystery ought to be by force of that Act, as the defendant was the day of the Writ purchased. 2 Inst 670.

An Outlawry also may be reversed, although there be no Error in return or Entries of the Exigent or Proclamation: and although the Proclamation be filed with the *Custos Brevium*, as namely, if that the same proclamation were not awarded according to the forme and effect of a Statute, in that case provided, into the County; and the Defendant named of the Parish where he had been resident: see Dyer 213. 214: a good case hereupon *infra annum & diem*, when next before the same Suite was begun, and commenced, or that the Defendant be misnamed therein, in his Surname, Degree or Myserie. And this Reversall is to be done by way of a Plea, drawn by a Clark to that purpose; for which you shall finde precedents in the Book of Entries, to which pleas the Attorney Generalls hand must by procured; but this way as being both very troublesome and chargeable, is much out of use.

It may also in this case be reversed by writ of Error (as well as by plea of the party) coming in upon a *Capias utlagat*. according to the Course of the Common law. 2 Inst 670:

An Outlawry may be also reversed by the Kings Generall pardon, which is usually granted at every Parliament, if so be the Defendant were outlawed before the day thereby limited, or by a speciall pardon, which must be done by way of plea, and *Scire Facias* directed to the Sheriff of the same County, wherein, the Action was first layd: And if the Sheriff doe return a *Scire feci* upon the said *Scire Facias*; then you shall need but one Writ of *Scire Facias*; if not,
C then

then you must have two returned with *Nihil*, &c. in this manner.

The within named A. C. (the Plaintiff) hath nothing within my Bayliwick, by which I am able to make known unto him, nor is found in the same.

D. L. Knight, Sheriff.

These *Stire facias*'s are to be drawn by the prothonotaries Clark, and then entred into a remembrance in the same Office, and a *Supersedeas* made, and a Certificate also made as above from the Prothonotary to the Clark of the Outlawries, that from thence forth no further Procelle may be made against the Defendant, and also entered upon Record.

And note in this case also, the Defendant must by his Attorney appear, and answer the Plaintiff in his Action, but no Bail need be put in.

The Fees thereof.

For the Copie of the Exigent,	8 d.
The two <i>Stire Facias</i> and Seales,	5 s. 2 d.
The Returns thereof,	2 s.
The filing of them,	8 d.
The taking out of the Remembrance,	1 s.
The Copies,	3 s. 4 d.
The Prothonotary,	5 s. 4 d.
The <i>Supersedeas</i> , and allowing thereof,	4 s. 11 d.
The Certificate,	1 s.
The Clark of the Outlawries,	2 s. 8 d.
The Attorneys Fee,	3 s. 4 d.

An Outlawry also may be reversed by writ of Error upon Error in the proceedings, as the want of the Warrant of Attorney, the not filing of the originall, *Capias*, *Alias*, or *Plures*, and then your Courte therein follows.

In the first place you are to have a copie of the Exigent or *Capias Vilegat*. which is to be carried to the

the Curſitor of the County where the Action lyes, and where the Defendant is returned outlawed, to have a writ of Error made thereupon, which Writ muſt be brought under Seale to the Lord cheife Juſtice of the Common Bench, or his Clark of the Errors for the time being, with the copie of the Outlawry, and thereupon the Clark of the Errors of the Common Bench makes a *Superſedeas* to the Sheriff of the County, where the Defendant either is, or ſeares to be arreſted for his diſcharge, and from him procure a Certificate to the Clark of the Outlawries (as formerly) the charge of the *Superſedeas* is 33 s. 4 d. beſides the ſearch and copie of the Outlawry. And in this caſe the Defendant by his Attorney muſt appear upon a new originall ſued out by the Plaintiff within two Terms: And this is the moſt uſuall & ready way (though moſt chargeable) for diſcharging of an Outlawry (eſpecially in the Vacation) if the Defendant be either under arreſt, or fear to be arreſted; but Bail muſt be put in, if the Debt or damage amount to 20 l. as in the like caſes beſore recited.

It's requiſite in this caſe the Attorney ſhould take mony of the Defendant for the Declaration, and his fee againſt the next Term, at the time of the delivery of the *Superſedeas* (eſpecially if the Defendant be not well known unto him) and a Warrant under his hand to appear, plead, or confeſſe the Action; for many times the Attorney is put to a great charge and trouble to finde out his client.

Theſe are the generall and particular inſtructions and directions to ſue to the outlawry, and to arreſt thereupon, and how to reverſe the ſame both in the behalf of the Plaintiff and Defendant; beſides which there are other wayes of ſuing by mean Proceſſe, when they proceed no further then to the taking out of an Originall, and then make an arreſt upon the *Capias*; or in

case the Party cannot be taken before the return of the said *Capias*, then you may take out a *Capias* by continuance, which costs you 10 d. to the Philizer, and 7 d. for the Seale. *viz.* 6 d. the writ and 4 d. the *post diem*.

And having now dilated at large the severall proceedings in actions of Debt, in order to Outlawry, or otherwise, and likewise the reverfall of such Outlawries, whereby the Defendant comes to appear, it now rests we should shew how they may declare, and in what manner those Declarations must; But before we proceed so far, it will not be amisse to insert some few rules or observations as a guide for the Attorney, both in the taking of instructions, and drawing his severall Declarations in other personall actions as follow.

IN actions of Debt, either upon specialty, as Bond or Bill, or for Rent arrear upon a demise by indentures or otherwise, or upon an action of Covenant, you must have recourse to the severall writings, by which you warrant your said actions, and the circumstance of time either for the date of the said writings, the place, the quantity of what Rent arreare, for what time, when Commencing and Ending, and what particular Covenant; (if but one) in an action of Covenant, you intend to insult on for the laying of the breach aright, and likewise you must enform your self how your Client came to be Entitled to the Debt, whether as Obligee, or otherwise, as Executor or Administrator of the Obligee: And if for arrear of Rent, whether the party came to it by mean assignment or reversion, in which cases you are to inform your selfe of the Attornment: in case of a lease for years, the reversion for years will passe without an Attornment of the Tenant, and for what time the Rent is arrear, and look what right the immediate Lessor or Lessees have the same, is in their assignes.

Things in action cannot be assigned, as the assignee shall bring his action in his owne name, unless in
case

case of an Assignee of a Banckrupt or the like.

If Rent grow due by Lease-paroll from year to year, which is so called, in respect there is nothing under hand and seal, but barely by word of mouth, to signify the Demise, you must know the time of the Demise, ascertain the thing demised, the Terme, The rent and time of payment of it: The time of the Lessees Entry, and what Rent is arrear by the Defendant.

If in Debt upon an Award.

YOU are to inform your selves of the Arbitrators names, the time of the Award made, and what was Awarded, and if you can get the Award it selfe, it is far better.

Note that if any under the Age of one and twenty years, either in this or any other Action, commence Suite, he must come in by his Guardian in proper Person to be admitted, which costs two shillings the Admittance; otherwise if the Defendant take notice of his Nonage, and that he appear not by Guardian, but otherwise the Defendant may plead it in Barre to his Action.

But if the Defendant take no advantage of it, it is holpen after a verdict by the Statute of *Jeofailes* but where a Chancery Clerk sues by priviledg and obtaines a verdict at common law, this is not holpen by Statute, being *casus omissionis* as it was adjudged in *Paytens* case, in the Court of common Bench.

And now take some few instructions in other Actions, as Trespasse upon Assault and Battery, false Imprisonment, &c.

In the first place, take notice of the time, or any time after the Trespass done, before the Teste of your Originall of the Trespass, by Assault and Imprisonment, and the place where (although I think nei-

ther of them Locall) together with the time, the Party remaineth Deceased or Imprisoned, and what it costs him by way of Fine or otherwise, to be released.

And note for the Assault of the Wife, Children, or Servant, the father and Master, as well as the Sarvent, may bring an Action, for the loss or hindrance he receives thereby.

He cannot bring an action for beating of the Child, as his child but onely *per quod servitium amisit*.

For Trespass either in Closes or Houses, or chasing of Cattell, or fishing, where another man hath right, as followes: and first,

For breaking your Close, the certainer you lay it, in naming the place, the time of the Trespass done, and with what Cattell, and how long the Trespass continued, and what Corn was consumed and eaten up, or trodden down with the Feet, and what Grass, and of what value; and it were to be wished, in Relation to the saving much Charge, there were the same

This is due by the new rules. course taken in the Court of common Bench that is done in the upper Bench, that is, to ascertain the place of the trespass done, by giving it his particular name and bounds, which if done in the Declaration, would prevent pleading the common Barre and new Assignment, and this with much ease, by saying, (The Close of A. called C. in D. he broke, &c.)

If any trespass done for chasing of Cattell, you must lay the time and place of chasing; worrying, and beating your Cattell, what Cattell, and how many they were, and what you were damnified by it, either in Ewes casting their Lambs, or being torne with Doges: or Kine in loosing their Milke, casting the r Calves, or Mares in the loss of their Colts, and the like.

An

An Action of trespass also lyes against one, for the rescuing of his owne Cattell out of your hands, in case you are driving them to the Pound, for trespass or otherwise, or in case he breake the Pound where you had Impounded them, and drive them away; in both which cases, you must shew what Right you had to take them, either as Damage-Feasant, or that you did distrain them for Rent or Services Arrear.

Note this diversity upon tendering of amends, or of rent in cases of distress.

1. First Tender upon the land before, the distress, makes the distresser vitious Co. lib. 8. 146. 147.

2. Tender after the distress and before the impounding makes the detainer not the takeing vitious, *ibid*.

3. Tender after the impounding neither makes the one nor the other vitious.

If your trespass be for taking away of Goods or Chattels, out of your ground or house (albeit Money) and such things are commonly taken out of your house they are to be named particularly, and their Value. If money in a Bag, the particular Sum.

In case a man take away a Ward, an Action lyes wherein you must shew, how the Plaintiff came to have Right to the Ward which the Defendant detaineth, as if it be Knights service, by his Fathers holding of such a Mannor of the Plaintiffs, the Lands he dyed seized of, &c. Shew the manner of the Tenure, and that the Childs Father dyed in the Homage of the Lord, whereby the Right of the Childs Marriage belongeth unto him: You must likewise know the time and place of taking him away, the Age of the Ward, together with the Damage the Plaintiff sustained.

where the tenant by Knights service dyes his heire within age, and estranger enters into the Custody of the land and gets the Ward of the Body, a writ of Co-

in uni Custodia lyes for the Lord of whom the land is holden. *v. N. B.* 88.

Where the Infant in such case enters into the land and holds out the Lord the writ of *Intrusion del Guard* lyes, *ibid.*

where the Lord profers mariage and the Infant refuseth there the writ *de valore maritagii* lyes. *V. N. B.* 89.

And in such case where the Infant marryes, the writ of Forfeiture of marriage lyes. *ibid.*

Where the Lord in possession of the body and land, and an estate, releaseth the Ward out of his hand, the Writ of Ravishment *de Guard* lyes *V. N. B.* 90.

The writ *de hared. abduct.* lyes for the Guardian in Socage 91.

Ejectment of Ward lyes where the Lord is ousted of the land and not of the Ward. *Ravishment de Ward* where he is ousted of the Ward, and not of the land, and *droit de Gard* where he is ousted of both *V. N. B.* 95.

If by socage Tenure the Lands holden, then the next of kindred (to whom the Lands cannot descend) hath that like Action for his Ward, wherein he must shew what he dyed of in Socage-Tenure, and of whose Mannour it was holden, together with the time the Plaintiff was seized of him, and the time, manner, and place of his taking away.

In an Action of trespass for spoyling or turning your Water-course, you first shew how he held the Water-course, from, where, and whither the Water-course came, and that it had used so to come time out of minde; then what benefit it did the Plaintiff, as in making his Grounds fertil. and for watring his Cattell; then how the Defendant did stop that Course, and with what, and the time by reason whereof the Plaintiff hath lost the benefit of it for such a time; or if the Ground
be

be overflowed by the like course, then shew how the Defendant, having such a Water course or Mills, lying neer the Plaintiffs Ground, did open his Floud gate and stopped the Water-course, and caused it to overflow the Bancks and drown the Lands.

In Action of account, take these ensuing.

There are but 3 kinds of writs of account against a man as *Guardian* 2 as *Bailiff*, 3 as *Receivor*. Co. Lit. 172.

2. If it were not before Auditors, then the proper action is an action upon the case upon an *in simul Impu- tasset*.

3. See 2 Inst. 144. and 380. excellent instructions about this account before auditors.

If an Action be brought for Arrerages of account, as where divers Reckonings are between two Persons, and they account together, and upon that account the one is found indebted to the other; then know the time when the parties accounts were, and before whom, if they had any Auditors, and what the same was, he was to account for, and the time when it was appointed to be paid by the Auditors.

The proces in account is *Jam. pon. and distres* upon *Nichil*. returned upon any of them proces of utlary *per stat. W. 2. cap. 11.* but distres in suite was at the Common law. 2 inst. 143. 144.

If you charge any as Receiver for moneys delivered, name the time when, and the place where, and the person that delivered it, and the Sum that was delivered, if he received it for the Rent of any thing, it is best to name the thing for what it was, *vi Ra: entr. 19. Reg. 135 136.*

If you charge him as a Bailiff of Lands and Goods; shew from what time he hath been so of the things under his charge, and of all things he received, and how long since he was Bailiff. *Re-entr. 17.*

If you charge him as Bailiff for any thing he hath sold for you, recite the thing to be accounted for.

ff. you may charge him as joynt occupier. *Re-entr. 18. 19. Reg. 135.*

Detinue.

F. N. B. 138.

The proces *per summons* attachment and distring.

F. N. B. 139. 2.

If you would bring an Action of Detinue for any thing that you have bought, and cannot have, shew the time when you bought it, and what you paid, and the time for the delivery of it.

Note detinue lyes not for money out of a Bagge. 6. S. 4. 11. *F. N. B. 138. 2.*

If you have delivered any thing to any man, and cannot have it again, you may have the like Action, knowing the value of the thing delivered, and to what use you did deliver it, and what time was appointed for the redelivery of it, in case it be for writings, either upon the delivery, or that it came to the Defendants hands by chance, know the Date and the effect of the Writing, the time when the Plaintiff was possessed of it, and the time when the Defendant had it.

Detinue for Charters that conceive free-hold lyes in *Com. Banc.* and if it be brought in any other Court, the Defendant may sue *prohibitor.* *F. N. B. 138.*

In Actions of the Case take these ensuing.

First for Trover, which is for the recovery of Goods that come to any mans hands by chance or not in a warrantable way, know the nature of the Goods, the value of them, the time and place when and where the Plaintiff was possessed of them, and how they came to the Defendants hands and the conversion.

In an Action of the Case for wards, if the Plaintiff have borne any Office of credit, it would do well to recite it in the Declaration, and know the time and place of speaking the words, either to the Plaintiff, or of the Plaintiff, together with what other Circumstances may make to aggravate the words spoken by the Defendant.

In an Action of the case, where felony is laid to ones charge, and the Party carried before a Justice of Peace, and so bound over to the Assizes; be sure in this case to take notice of the time when, and the place where he laid the Felony to him, and for what, and the Constables name that detained him, and the Justices name before whom he was brought, and the bayling or committing of him till the Assizes, the day of the Assizes held, and before whom the Copy of his Inditement, and his Acquittall thereupon.

Be sure that it be a malicious prosecution, and also false.

Upon an Escape upon a mean Proccesse.

IF the Bailiff have Arrested the Party, you are to sue upon mean Proccess, and either for favour or Bribes, release him afterwards, so that you lose thereby the benefit of your Arrest,

First

First know what cause your Client had against the person so Arrested, and for how much money, and then set forth, that for the recovery thereof, he took out such a Writ, returnable such a time, directed to such a Sheriff Whereupon a Warrant was made and delivered to the Bailiff, by vertue whereof he Arrested the party, and such a day released him.

When you buy any thing upon Warranty, whether it be lving Cattell, or any Chattels or Goods that are warranted to be sound, usefull, and good, or that should contain such a number, either of Loads, Pounds-weight or measure, and it holdeth not out so, an Action lyes, in which case you must take notice of the quantity and quality of the thing, when sold, and for how much, the time and place, and that the Defendant did warrant it to be good, &c.

Note that there must be an expresse warranty, else the account will not lye.

An Action likewise lyes against a Farrier, who for a Sum of money undertakes a cure, and wholly neglects it, or uses contrary or poysonous Medicines, whereby your Horse dieth or is worsted.

And likewise against a Smith that pricks your Horse in shoeing of him, whereby he becomes lame and unusefull, and you lose the benefit of his Service.

And where a Taylor taketh a quantity of Cloath or Stuff to make a Suite, and cutteth it so scanty as that it will not be for the Parties use.

And likewise for many other frauds and deceits, both in Shop-keepers, Artificers and men almost of all Mysteries and Professions.

Having thus given some brieft directions what to take by way of Instruction and Information for the Attorney in behalfe of his Client, in order to drawing a Declaration,

ration, I shall now proceed to the said Declaration, Issue, and Iudgment, after appearance made by Superseas to the Exigent, or upon any other appearance upon Arrest had by verine of mean Proceß.

THe Defendant appearing by putting in speciall Bail to the Action, or otherwise upon the *Capias, Alias*, or *Plures* in the Philizers Office, where the same was sued forth, or by *Superseas* to the *Exigent*, brought and allowed with the Sheriff, you must inform your self what Attorney doth appear for the Defendant; that done, you must declare either upon Bond, Bill, Indenture, trespass, or otherwise, as your Case requires, alwayes observing this rule, that there be no difference between the Additions in the Writs or summes therein contained, and your Declarations, for the most literally agree, the one being a Warrant for the other; for if there be Variance, and the Defendant take notice of it, he may plead that variance in abatement to the Writ.

Note in case of Baile put in or reverfall of an utlary, there must be an Attorney present, to appear unlesse the plaintiff Defendant will do it in proper person.

And for the drawing of those Declarations, it requires the skill, studie, and experience of an able Clark of the *Prothonotaries* Office, and some helps there have been formerly by Books of *Entries*, which being at an Extraordinary rate, have not been so much in use amongst Attornies, but there is now a booke extant of select *Presidents in English*, for almost all Declarations, out of the Works of the learned *Prothonotary* Mr. *Brownelaw*, and is of small price, sold by Mr. *Twyford* in *Vine-Court* Middle Temple, to which I refer you.

Having youre Declaration drawn, you must enter it upon some roll of the Court in one or other of the *Prothonotaries* Office, either by your selfe or some
Clark

Clark of the Office, who must see it put in the Docquet of that Office, and thereto put the number Roll, and so enter it in your owne docket book, and keepe your number-roll, that so you may have recourse to the Roll afterward, to enter up your Continuances, if the Cause continue above one term before Judgment or tryall had.

Note this must be understood, in case of continuances before pleading to issue, otherwise the Writs are before verdict and after pleading, entred by the Clerke of the judgments in case of no writ *per* the H. officer.

By the course of the Court the Defendants are to answer the same Term they appear, if the Writs be returnable at the beginning of the Term, especially in Issuable Termes, which are *Trinity* and *Hilary*; but in other Termes if the Action be not laid in *London*, the Defendants have for the most part imparlance, or time to plead till the next Term.

Note that this is in case the writ be perfect whereon the arrest was made, and was by the new rules; the case holds if the writ be rold the 2 or 3 returne.

And here take notice there be two kinds of imparlance, the one Generall, the other Speciall; after a generall imparlance had, the Defendant cannot plead in abatement to the Writ, Excommunication, or the like, nor any Priviledge out of another Court as a priviledged man.

Note if no imparlance appear upon record he may plead in abatement.

But after a speciall imparlance many pleas may be pleaded, which after the generall imparlance cannot be allowed: If a speciall imparlance be prayed, you must take for the Entry thereof of the Defendants Attorney the summe of 2 s.

Note

The Compleat Attorney.

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Note after speciall imparlance one cannot plead to the jurisdiction of the Court.

If the Attorney for the Defendant upon receiving a Declaration do not crave that the Condition of the Bond may be entred with the imparlance, and do not pay for the same, then he is debarred from pleading Conditions performed at any time after, without moving the Court, and paying 5 s. to the Judges Box.

Rules to answer must be entred in some of the Remembrances in one of the *Protobonaries* Office, which is done briefly thus.

Hereford. ff. *An Imparlance between A. B. Plaintiff, and L. D. lately of S. in the Countrey of H. Yeoman, & otherwise called A. B. of L. in the Countrey of H. Yeoman, Defendant of a plea of debt.*

WHich being thus written, you put either in the Margent, or over head your rule, which is, unlessse the Defendant plead within (some few dayes) let Judgment be Entred.

And these are entred either by the *See the new rules for this.* Secondary of the Office, where the Plaintiffs Attorney enters his Causes on the Bill of Pleas; or as before I have said, by the Attorney or Clark for him, upon the common Remembrance, for which there is 4 d. and upon the Expiration of the same rule, no Plea being brought in, you must signe Judgment with the *Protobonarie* for want of answer.

See the new rules for this. If the Attorney for the Plaintiff do not declare against the Defendant upon his appearance within reasonable time in the Term after the appearance made, then the Attorney for the Defendant may also enter

enter a rule in the Bil of Pleas against the Plaintiff, to declare and thereupon cause a *Non prosecutus* to be entred, which must be signed with the *Prothonotary*, and Costs given for the unjust vexation ; for which Costs he shall have Execution against the Plaintiff, but if the Plaintiff sue as Executor or Adminittrator, he shall pay no Costs upon any Non-suit unlesse in an action upon the case upon a promise made to him as executor.

The imparlance is a time of leave, or licence given from one Terme to the Terme succeeding, by the Plaintiff to the Defendant, either to plead to his action brought, or to let it passe by default; and to that purpose the next Terme after the imparlance had as aforesaid, the Attorney for the Plaintiff may call to the Attorney of the Defendant, to answer to the Declaration, and if he do not plead in due time, give him rule to answer, which done and the Rule expired, he may enter Judgment as before is declared, either by *Nihil dicit*, for the Debt and costs, as is fit and very usuall in cases before expressed, if Debt.

Where the Defendant pleads generall Issues or Pleas as is most usuall, and now directed to be done by a

By the Statute
called the Meale
Act made 23.
Oct. 1650.

* Statute lately made, whereby the speciall matter, if any be, may be given in Evidence, as in an action of Debt, that he owes nothing by the Country, &c. Or to Debt upon Bond, or Bill penall, that he did

seale and deliver through threats, &c. Or by reason of hard Imprisonment, or that it is not his Deed, or that he hath performed conditions, or the like; or in Action of the case, the generall issue not guilty for words, if upon promise, that he did not assume, &c. And for not guilty likewise in Action of Trespass or Battery. In these and the like cases of common Pleas or Issues, there is no more requisite, but that the

Attorney

Attorney for the Defendant, do put his hand to the Plaintiffs Attorneys *Docquet Book*, and that done the Plaintiffs Attorney doth draw up the Plea and make a copie of the Issue, and there delivereth it to the Defendants Attorney, who must receive it, and pay for entering such his Plea, and for the Book, and then usually they give warning of a tryall, unlesse they forbeat tryall the next Assizes.

But if the Defendant plead specially (which will not be so usuall as formerly) he is to bring it to the Plaintiffs Attorney under a Serjeants hand, and if the Plaintiff reply specially, either by traverse or otherwise, the Replication is also to be under a Serjeants hand, and he is to give it to the Defendants Attorney.

So if the Defendant demurre to a Declaration, it is also to be brought under a Serjeants hand.

It's most generall, that the Jury arise out of that County and Town or Parish where the action is laid for tryall, unlesse it be removed by pleading, as where an action is brought upon a Bond or Bill, and the action laid in *Herefordshire*, and the Defendant pleads conditions performed, for the mony paid at *Stow* in *Glocestershire*, according to the condition, here the *Venire* shall not arise in *Hereford*, but in *Stow* in the county of *Glocester*, and thither shall the record be carried to be tried.

Note if the *venire*, chance to arise out of her Countys, the triall must be at barr, unles it be upon two issues.

If an action upon the Statute of *Hue and Cry* be brought against a Hundred for a robbery done within the Hundred, the *Venire* shall not arise in that Hundred where the fact was done (for then they would be Judges in their own cause, which is against common reason) but the *Venire* shall arise in the Hun-

dred, next adjoyning, and to this purpose, the *Venire* must be awarded specially, which is worthy observation.

Note it must be by way of Challenge.

After the Issue joyned and entred, there may be severall causes of challenge, as where the Defendant is of kindred to the Sheriff, either by blood or marriage the Plaintiff may pray the *Venire facias* may be directed to the Coroners, and if the Defendant agree thereto, it shall be accordingly. This must be specially awarded upon the Issue roll, and in the awarding of it, it must be set down and derived how the Sheriff is of kindred, and then is the *Venire facias* directed to the Coroners called a challenge to the Sheriff.

Challenge to the Array is to the Jury at the Assises properly, *Venire* in that case may be directed to the Sheriff.

You cannot make a challenge to the Jury, till after that they are called, and before they are sworne, for afterwards it comes too late.

* If your tryall be by *Nisi prius* at the See for this Co. Assizes in the Country, and your Jury *Lit. 156.* appear not full upon the pannell, the Plaintiffs Councell may crave a *Decem tales de circumstantibus*, ten of the standers by to fill up the Jury, or a lesse number, according as is requisite, which *Tales* must be mentioned upon return of the *Postea*, and the Judgment thereupon on the issue Roll.

These *Tales de Circumstant.* be given by the Statute. 35. H. 8. ca. 6. And the Justices may award *tales* when onely one Juror appeares. *Dy. 245. Co. lib. 10 103. b.*

And upon the Plaintiffs default, after the first Term the Defendants Attorney may bring the cause to tryall, by *Venire Facias*, by Proviso.

Note

Note in Replevin upon avowry, the Defendants Attorney may bring the cause to triall the first Term by promise.

If at the triall of any *Nisi prius*, the witnesses of the Plaintiff or Defendant will not voluntarily appear, without being served with the Processe, to testifie the truth of their knowledge, in the matter or cause in question, then you may have a *Subpœna ad testificand.* for the said witnesses out of the *Prothonotaries* Office, and therewith serve them, and compell them to appear, the Fee whereof is, 2 s. 7 d.

You may have a *subpœna* also from the Clark of the Assises, and it hath been adjudged a good *subpœna* upon the action grounded S. Statute 5. *Elix.*

When you proceed unto your tryall, you must (having entred as before your Declaration with the Issue joyned in the *Prothonotaries* Office) make out a *Venire Facias* upon your Issue, and get it signed with the *Prothonotary*, and having sealed it, you must get it returned by the Sheriff of the county or City where you lay your Action, and upon returne thereof, you must also sue forth a *Habeas Corpora*, which is made by a particular Officer of the Court, called the Clarke of the Juries, and deliver the same to the Sheriff in due time, that so he may warne the Jury, and get the same returned before the Assizes.

Note that if a cause be brought to tryall, and a *Habeas Corpora Iuratorum* be delivered to the Sheriff who summons the Jury, and if you for reasons best known unto your self, defer the tryall untill some longer time, and afterwards you think fit to bring it again to tryall, you need not be at charge of a second *Venire Facias*, but may take a copy from the *Custos Brevium* of your first Writ, if you keep it not in your hands, paying him for it 8 d. and for the search of it 5 d.

Upon which Copie or old writ, the Clark of the Juries will make you an *Alias habeas corpora*, or *Plures*, paying for it in Debt or Trespasse, 10 d.

And in other Actions, 1 s. 6 d.

And for the continuance of it every Terme, 4 d.

Then you must in suing forth your *Nisi prius*, ingrosse your Record in Parchment, *Verbatim*, according to the Copie of the issue made up, and the entry of it upon the Roll, in the Prothonotaries office, and then examine the same with the Prothonotary, if it be upon an issue joyned the same Terme, whose hand must be to it and then carry the same to the Clark of the Treasury for the time being, giving him such fees for signing and making up the Record, as are hereafter specified.

But if the issue were entred of a former Term, then must you deliver the paper book of the Issue to the clark of the Treasury who will examine the same by the rol, and make up the record thereupon; which done, and the same signed by him or his Deputy, you must seal the same with the * Lord cheif Justice of the Court, for the time being, who hath a seal for that purpose, and then deliver the Record so sealed, together with the *Habeas Corpus Iur:* returned by the Sheriff to the Clark of the Assize for the same County, where the matter is to be tryed.

The generall fees in an action of Debt, Trespasse, &c. follow, as to making up the Record 5 d.

For the *Venire facias*, 2 s. 7 d.

For the return thereof, 2 s. 4 d.

For the *Post diem* thereof, 4 d.

For the *Habeas corpora Jurator.* and *Expedition.* 2 s.

For summonig the Jury, 12 s.

If

The Compleat Attorney.

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If in <i>London</i> , or a corporation, but	4 s. 4 d.
For signing the Record with the Clark of the Treasury, if the same exceed not 3 sheets	2 s.
For every sheet exceeding	4 d.
For examining the <i>Iurato</i> .	4 d.
For writing the Record, for every sheet	4 d.
For examining the same by the <i>Prothonotary</i>	1 s.
For the Seale	2 s. 2 d.

Having thus procured your Record of *Nisi prius*, you are to carry it at the time of the Assize and deliver it into the Clark of the Assize, and there pay the Judges fee, having retained your counsell, and your Witnelles being in readinesse for the tryall of the Truth of your Cause, according to the Issue.

The Fees you are to pay at the Assizes are as follow,

	s. d.
For the Judges Fee in putting in the Record of <i>Nisi prius</i>	11 s. 8 d.
To each Councillour you retain at the least	10 s.
For reading the Record	10 s.
For the Marshalls fees	2 s.
For the Jury, eight pence a piece	8 s.
To the Bailiff that keeps the Jury	2 s.
For the Crier.	1 s.
For the Oath of every Witnesse.	4 d.
For a <i>Non-suit</i>	
For a <i>Tales de circumstantibus</i>	
For a privy verdict	
For a Warrant of Attorney if the Attorney be absent.	4 s.

The fees doe somewhat differ by custome in severall Counties. But if the triall bee had before the Lord cheif Justice of the common Bench in *London* those

those are common fees to bee added unto the former.

For the Green-cloth	1 s. 6 d.
To the Bar-Keeper and Hall-keeper	2 s.
To the Judges Grooms or Foot-cloth-man	1 s.
To procure the Record to be read.	
For Lights, if the cause be tryed by candle light	

The Assizes ended, your tryal being had, and Verdict passed for your Client at the next Term following, you are to call for the return of the *Poslea* from the Clark of the Assize, and thereupon bring the same to the Prothonotaries Office to get costs assessed, for which end (if your charges have been extraordinary) you must bring a Bill of disbursements under your hand, otherwise not, and thereupon cause Judgment to be entred, For the Entry whereof, the generall Fees are as follow.

For the return of the <i>Poslea</i>	2 s.
For signing the Costs	1 s.
For entring the Judgment if the jury did fully appeare.	2 s. 4 d.
If there were a <i>Tales</i> , then more	2 s.
For the Copy of the judgment	1 s. 4 d.

Having thus far proceeded, you may now procure Processe and Writs of Execution, by *Capias ad Satisfaciendum*, *Fieri facias*, *Elegit*, or otherwise, according to your desire, and as the nature of your Action brought, doth allow or require; wherein,

Note that the **Capias ad Satisfaciendum* is the taking of the Bodie onely of the partie in Execution, till he satisfie for
Cap. lay at
Common law
for the Kings
Debt, but not at the suite of the party unles in trespass.

the Debt and Damages ; * The *Fieri facias* against the Goods onely , and the *Elegit* against the Moietie or any one halfe of his Lands and Tenements and all his Goods and Chattels (his Oxen and Plow-Chattell onely excepted) To have and to hold the Goods as his own Goods, and the said Moietie of the Lands untill his Debt and costs shall bee fully satisfied and paid. But note this, that after an *Elegit* executed and filed, you can never have any other Execution, it being your own Election.

* *Elegit* is given by the Statute : W 2. cap. 18.

Note also, that if you first sue forth a Writ of *Fieri Facias* against the Goods of the Defendant, and by vertue thereof levy part of the Debt and not the whole, then you may have afterwards a *Capias ad Satisfaciend.* against his Body, or an *Elegit* for the rest, but if you first Imprison his Body by vertue of a *Capias ad Satisfaciend.* then you cannot have a *Fieri Facias* against the Goods, or an *Elegit* : if you have severall judgments against severall men for one and the same Debt, they being jointly and severally bound for the same ; you may have two or three severall Executions against them all, untill the Debt and Costs be satisfied by one of them, but cannot have the whole of every of them ; and if the Defendant be in another County, and not to be found in the same County where the action was laid, then you must sue forth a *Capias ad Satisfaciend.* into the same Countie where the Action was laid, and get the Sheriff to return upon it (that he is not to be found) and then sue forth a *Testium*, into the County where he is to be found, and those Executions made immediately after Verdicts, &c. judgments had upon them are made by the Clerks of the judgments, in the respective Prothonotaries Office, who keep the judgment Papers, where they are transcribed.

We have now shewed you the course how to proceed to tryall, after Outlawry reversed on an appearance, in case the Defendant plead an issuable Plea, or indeed upon any other appearance made upon mean Processe: Onely take notice of this, that if the Plaintiffs Action be just, and right, and for good Debts or just causes of Action; the Attorney for the Defendant shall do well to counsell his Client to yeeld to Judgment, either by way of not being informed, Confession, or otherwise, so that he procure stay of Execution against his Client for such time as shall be agreed on by both Attorneys; which must be carefully looked unto by the Attorney of the Defendant in time, before the rule be out and they take Judgment by default: And this he shall do by putting his hand to the Plaintiffs Attorneys Docquet Book, in this manner.

I am not informed so that Execution be staid till the Morrow after the holy Trinity.

Hereford ff. Bridges for Lacie.

Dowdeswell.

Dowdeswell for Hunt. Rot.

After which you draw up the Judgment short in paper and carry it to the * *Prothonotary*, who is to tax Colts, and for that you pay him $\frac{1}{2}$ s. 4 d. if in Debt upon one single Contract, and then you are to take it out (the Plaintiffs name, and the Defendants and the Attorneys for the plaintiff, in the Judgment Book) after which you enter it upon some Roll of the Court in the *Prothonotaries* Office, and keep the number Roll by you to your Docquet Book, that so upon all occasions you may have ready recourse to it; and the Plaintiffs Attorney must be careful of keeping together the Copies of all his Judgments

*Formerly the
penny judge did
tax the Colts.*

Judgments, that so when he hath occasion to renew them by *Scire facias*, he need not be driven to take out new Copies, which are chargeable out of the Treasury.

And note, that in case the Judgement have continued above a year and a day, and no Execution taken out, he must be put to renew it by *Scire facias*, so must he likewise doe, in case the Plaintiff or Defendant die, unless he hath from Terme to Terme sued proces filed.

And in case of any Judgment had in debt against an Executor or Administrator, you can have but a *Fieri facias* of the Goods of the party deceased, in the hands of the Executor or Administrator, but if the Sheriff return upon your *Scire facias* a *devastavit*, then shall you have a *Fieri facias* of the proper Goods of the executor or Administrator; and if the Sheriff return that he hath no Goods, you shall have a *Capias* against his Body, and after an Exigent, and so to the Outlawry after Judgment, if you please, in case you find him not easily to be Arrested.

Note further that you may have a *cap.* for the Costs, and in case of *ne unque* Executor pleaded, you may have *Fi. fa. de bonis propriis*, If there be no goods of the testators.

The course Whereof is thus.

First, then he must have a *Capias ad satisfaciendum* to be made for the Debt and Costs, if it be in debt; or after a Judgment had for Trespasse for the Damages and costs, as in the Judgment with which must be made into the same Countie where the Action was laid and get the same returned by the Sheriff. with (*That he is not found &c.*) Then he must carry the same to the
Exigentor

Exigent of the same Countie, who will make an *Exigent* thereupon, which must be delivered unto the Under-Sheriff to be executed and returned accordingly, as other *Exigents*.

Note that in this Case there shall need no Proclamation at all against the Defendant, to give him notice thereof.

The *Exigent* being returned, you may sue forth the Processe of Outlawrie from the Clark of the Outlawries, either generall or speciall, as in other Actions afore specified; whereupon the Defendant, if he be arrested, cannot be discharged without satisfactions to the Plaintiff, and reverling, or pardon of the Outlawry; the plaintiff also may bring an action of debt upon the Judgment.

The Fees to the Outlawry after Judgment are as follow.

	<i>s d.</i>
F OR the <i>Capias ad satisfaciendum</i>	I-I
For the return thereof	9-4
For the <i>Post diem</i>	0-4
For the <i>Exigent</i>	I-7
For the returne thereof	0-4
For the generall <i>Capias utlagatum</i>	0-II
For the speciall <i>Capias utlagatum</i>	2-2

Note that in this Case you may have either generall or speciall *Capias utlagatum* into as many severall Counties as you will, either in *England* or *Wales*; but observe further, that no processe whatsoever issuing or to be made in or out of the Common pleas, can be directed or executed to or by any Under-Sheriff in *Wales*, but onely *Elegits*, *Extents*, Proclamations upon the meane Processe

Processe as before; *Capias uslagatum*, generall or speciall, or upon Outlawries after Judgment. If the Defendant be Outlawed after Judgment, If he cannot bee arrested within a year and day, yet the Plaintiff shall not need to renew Judgment by way of *Scire facias*, but otherwise in case he be not Outlawed, he must, as I before recited.

Note if a man be taken upon an utlary after judgment after the year and day he is not in Execution for the party without prayer. Co. lib 5. 89.

If judgment be given in the Common Bench and removed by writ of Error, and judgment affirme within the year they shall award execution, and the plaintiff is not put to his *Scire facias*. Co. lib. 5. 88. against the Opinion of 14. H. 7. 15.

At the Common law when one had recovered after the year and day he was put to a new account upon the judgment, and the *Scire fac.* is given by the Stat. W. 2. cap. 45. but in reall accounts a *Scire facias* did ly at Common law.

The manner of renewing of the Judgment by Scire Facias.

FIRST, The plaintiff must sue forth a *Scire facias* against the Defendant in the County where the Action was laid, directed to the Sheriff, to give notice to the Defendant to appear and shew cause why the Plaintiff should not have Execution against him, for the Debt and costs formerly recovered: To which Writ if the Defendant can shew any good cause as a Release, satisfaction, or any other just cause or sufficient discharge, then he may appear, and plead in Bar his discharge.

His appearance must be entered in that *Prothonotary*: office one of which *Scire fac.* was made.

If

If the Defendant upon returne of the same *Scire facias*, doe not forthwith appear and plead, the Plaintiff shall have present Execution against him.

But if the Defendant, after the said judgment obtained, and before satisfaction of the said Debt had, dye unlesse the Plaintiff procure a *Scire feci*, &c. to be returned upon the first *Scire facias* against the Executor or Administrator, then the Plaintiff must sue forth a second *Scire facias* against the Executor or Administrator of the Defendant, and upon their second default, the Plaintiff shall have present Execution against them, having after the return of the said *Scire facias*, taken it out, and given a Rule in Remembrance in the *Prothonotaries* Office to this purpose, that unlesse the Defendant alleadge something to this Writ (by such a day) Execution is to be made by default.

NOte that these severall Writs are to bee made and sued forth together with Execution, in and out of the same *Prothonotaries* Office, and where the first judgment was entred. And the said Writs of *Scire facias*, together with the new judgment had thereupon, to be entred upon Record, in the same Office, and the Writs carefully filed with the *Custos brevium*.

The severall Fees are these.

For search in the Docquet for the Number- Roll,	4 d.
For searching in the Treasury	4 d.
For the Copy of the Judgment usually	2 s.
For the Clark for making the Writ	8 d.
	To

The Compleat Attorney.

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To the Prothonotary for signing of it	1 s. 4 d.
For the Seal of it,	7 d.
For the Return with a <i>Nichil</i>	1 s.
For the Return with a <i>Scire feci</i>	2 s.
For entring the Judgment upon default, upon one <i>Scire facias</i> .	2 s. 4 d.
If upon two <i>Scire facias</i>	4 s.
For the Copy	2 s.
For taking the Writs into a Remembrance	1 s.
For the Rule	4 d.
For a Warrant of Attorney	3 d.

Upon these proceedings duly and truly performed, the Plaintiff may have Execution against the Defendant, by *Capias ad satisfaciendum*, by *Elegit*, or otherwise, at his pleasure (as is before told you in Writs of Execution :) And if the Defendant be dead, then there shall issue against the Executor, a *Scire facias de bonis testatoris*.

Quare executionem de bonis testatoris habere non debet;
&c.

The Executor in such case cannot plead *plene administravit* generally.

THUS far having proceeded in Debt against the Defendant himself, his Executor, or Administrator, either by way of *Scire facias*, or otherwise, we now proceed to prosecution, to Judgment and Execution upon speciall Baile; wherein observe these Rules following.

IF the Defendant be arrested by meane Processe, as *Capias*, *Alias*, or *Plures*, and the Plaintiff holdeth him not sufficient to answer the debt or damages contained in the Writ, the same amounting to 20 l. or upwards: In this case the Plaintiff upon the returne of
the

the Writ, (By entering a *ne recipiat* with the Philizer out of whose office the *capias* did issue) may crave speciall Baile to bee put into his Action, which the Defendant must put in before some judge of the Court where the Cause depends, who will accept of such Baile as the validity or weight of the Cause doth require or in his discretion shall bee thought fit.

If the appearance be upon arrest by the *Capias*, *Alias*, or *Plures*, then the Baile must be taken, and entred by the Philizer of the same County where the Action was laid, and who made the said Proceffe.

BUT if the Defendant bee arrested in the Mayor, Bailiffs, or Sheriffs Court, of any City or Corporation, and the Defendant by any Writ of Priviledge, or *Habeas Corpus*, doe remove the same out of the same Corporation to be tried at Common Law above.

Note upon such proces baile is requireable of what nature soever the Action bee.

Then the Baile being taken by any judge of the same Court, must be entred in the same *Prothonotaries* Office, where the said Writ of Priviledge or *Habeas corpus* issued and was sued out.

THE Defendant being as aforesaid bailed must bring his new order within 2 Termes following, Terme for one when the bail was taken, unles it was taken the last day of the Terme, and declare against him, the Plaintiff as the nature of his Cause or Action shall require, observing the same forme and manner in every respect or point to procure Judgment and Execution by way of *Nihil dicit*, *non sum informatus*, Confession of the Action, triall by *Nisi prius*, or otherwise, as is formerly set down and expressed by *Supersedeas*.

And the Plaintiff having obtained judgment against
the

the Defendant, and perceiving that he is not easily to be arrested and taken in Execution, or not sufficient to satisfy the same, but knoweth the Bail to be better able, then the plaintiff may at his choice leave the Defendant, and prosecute the Baile in this manner following.

First, the Judgment being entred, hee must sue forth an Execution by *Capias ad satisfaciendum* against the Defendant, directed to the Sheriff of the same Countie where the Action was first laid, and upon the returne thereof, get the same returned by *Non est inventus*, that is, (he is not to be found) Then he must procure a Writ of * *Scire facias* against the Baile, to shew cause why the Plaintiff should not have Execution against them according to the Recovery or Judgment so had against the Defendant, upon which Writ if the Sheriff doe returne a *Scire feci*, then there needs no second Writ to be made, but if he return a *Nihil*, then there must be a second Writ of *Scire facias*, which being returned likewise with a *Nihil*, then the two Writs of *Scire facias* must be taken out upon remembrance in the *Prothonotaries* Office with the returnes of them, and Rules thereupon given, and filed accordingly with the *Custos brevium*; and thereupon if the Baile shew not cause to the contrary, Judgment by default shall be entred against them in the said *Prothonotaries* Office, for the sum in which they became Baile as aforesaid, whereupon the Plaintiff may take Execution out against them, either by *Fieri facias*, or *Elegit*, but not by *Capias ad satisfaciendum*. because it is against the tenour of the baile.

* Note the *Scire facias* must issue to the Sheriff of the Countie where the Caption was, vi. Hob. 4. and 196.

And

And in this case observe, that the Plaintiff may likewise sue and arrest the Baile going by way of Originall at the Common law, for the sum for which they became bail, and arrest their Bodies, either upon the *Capias*, *Alias*, or *Plures*, or sue them to the Exigent thereupon, and declare upon the said Recognizance, using all proceedings therein as in an Action of Debt, but in this the Action must bee laid in the Countie of *Middlesex* onely, where the Records do lie, and whence the *Venire* out of that respect must rise.

And if the bail cannot be arrested in the Countie of *Middlesex* upon a *Capias*, &c. you may return (he cannot be found, &c.) and sue forth thereupon a Writ of *Teflatum*, and by that means arrest them in any other Countie where they may be found, observing all the proceedings, as in an Action of Debt.

WE have now shewed you how to proceed against the Bail, as well as against the Defendant himself, wee come next to shew you how to prosecute a Writ of Error and reverse Iudgment thereupon (which is not so absolutely taken away, as most men conceive by the late * statute) but that still if there be substantiall matter of Error to be allowed of the Court, it holds good after verdict, and is not at all taken away in Iudgment upon *Nihil dicit*, &c.

* This is intended the stat.
made 4 November,
1653.

And there are various causes of reversing an Outlawry, as we formerly shewed, so some of them may serve to reverse a Iudgment, which I shall here particularly relate.

After a Iudgment had and recovered by (*Non sum informatus*,) Confession or otherwise (if it be not by triall of *Nisi prius*) these causes of Error or any of them

them being duly found, and may serve to reverse and make void the same.

First if there be any materiall difference or variance between the additions in the Originall, or the processe of *Capias*, *Alias*, *Plures*, and *Exigent* and the Iudgment which is warranted them; this is good cause of Errour.

Secondly, if the Debt demanded in the processe or either of them, and the Debt in the Iudgment recovered, do not agree, but are different, this is good cause of Err.

Thirdly, if the writ be not ordinarily and duly returned and filed with the *Custos Brevium*, there is a just cause of Error.

Fourthly, if there be not warrants of Attorney duly filed, and put into the Office according as the cause requireth, as one for the plaintiff upon suing forth of the *Exigent*, or upon the entry of the judgment, there is good cause of Error, for which yon are to make search with the Clerks of the warrants for the time being.

These may be filed upon motion, before Error assigned.

And for these and all other Errours you are to search and get copies of the Writs from the *Custos Brevium*, and observe diligently both them and their returns, and confer them with the judgment as it is entred upon Record in the *Prothonotaries* Office, where you are to take your number Role out of the *Docquets* to that purpose, that so you may goe readily to it in the Treasury.

Fifthly if the Defendant be arrested by a VVrit * of *Telatum* in a Sorraine county and no VVrit of *Capias ad satisfaciendum* returned against the Defendant with a *Non est inventus*, in the same County, where the Action was laid and filed with the *Custos brevium*, that is good cause of error in the Execution, but not in the judgment.

** See for this a strange case in Hob. 68.*

NOW being informed of the causes of Error, and that the Defendant be not arrested and taken in Execution, but would avoid the same, then must he proceed as follows.

IN the first place, having the number Roll, he shall do well to get a copy of the Judgment, with the Additions of the party Defendant, and of the Debt and Costs of Suit literally as it is entred upon the Record.

The *Prothonotaries* Office as I formerly told you, is the place where you are first to resort, and there to the Docquet house, to find out your number Role in the Docquets of that Term, when the judgment was entred; and having found the Cause, take the number Role, and then repaire to the Records of the Treasury at *Westminster*, and so the Roll, and take a true Copy of the judgment in all things, as above.

Then carry the same or a Copy of the Precipe, Debt and Cost to the Curllitor of the same Countie where the Action is laid, who thereupon will make you a writ of Error for which you pay 2 s. 8 d.

THEN you must goe with the Writ of Error to the Clark of the Errors, for the time being: who will take out the judgment with the Debt and Costs of Suit in his book of Remembrance for Bayle, and be sure you carry with you good Sureties, such as the Validity of the cause doth require. Note that Bayle is requirable upon a Writ of Error *per stat. 3 Jac. ca. 8*: in Debt upon a single bond without condition for payment of money onely; or rent, or contract.

Thereupon your Sureties together with the Writ, must be brought to the Lord chiefe Justice of the
common

common bench for the time being, and there enter bail in a Recognizance, together with the Defendant, in double of the Debt, that the Defendant hath good cause of Error, and shall follow the same Writ with effect: and if the Defendant shall happen to be condemned therein, and not able to prove sufficient Error therein, then that the Defendant shall pay the condemnation therein, with further costs of suite, such as shall be allowed, or they the Sureties for to do the same. To this the Iudg subscribeth both his hand, and thereupon giveth warrant to the said Clerk of the Errour to make *Superfedeas*, one, two, or more, the Defendant for his Indemnity, or safeguard from Arrest, shall require which Writ or Writs the Defendant is to allow with the Sheriff of the same countie or counties where he st underh in danger, or Feare of Execution before he be Arrested or the said Execution executed, either upon Body or Goods, or else the said *Superfedeas* is of no force, nor can be allowed, whereof the Defendant is to have speciall care, that he have it in an early manner.

And this may be done aswell in the vacation, as in the Term time if the defendant be not arrested, or have his goods taken in execution, by vertue of the said judgment.

But if the defendant be taken in execution, before the *Superfedeas* be procured, then the *Superfedeas* comes too late. For the defendant shall not thereupon be released, but must continue in durance, untill such time as the judgment shall be reversed by the said writ of Error, in the Upper Bench.

FOR Reversall whereof, he must not only sue forth his writ of error, as above, but also cause the whole Record of all the proceedings, from the Originall & the beginning of the same cause (if Errour be not found in

the entry of the judgment it self) to be certified by the said Clarke of the Errors out of the common pleas into the Upper Bench And Assigne cause of Error there. Note the Originall must be certified by the *Custos Brevium* by force of a *Certiorari* in that behalse directed to him out of the Upper Bench.

The record being thus certified, and Errour assigned upon the return of the said writ of Errour, he is to take Copies thereof, And thereupon Sue forth a writ of *Scire Facias* to the plaintiff, in the action to hear Errors.)

To this the Plaintiff if he see cause may appeare and plead, and the most usuall and common plea there is that the Record is nothing erroneous.

The plaintiff having so pleaded, and willing to have the said Error argued, and the judgment confirmed as cause shall require.

The Defendant according to his Recognizance, must so Follow the same with effect, or else he will be condemned therein.

The Defendant is then to labour for a day, given for the arguing of the same Errors if the cause shall so require,

But if the Defendant doe delay the plaintiff, the Plaintiff is to sue forth two *Scire Facias* against the Defendant to shew cause why he should not have Execution: And if at return of the second *Scire Facias* Errors be not assigned, judgment is confirmed for the Plaintiff.

NOTE that in this case upon a writ of error brought upon a judgment had in the Court of common Bench and returned into the upper

* By such a Bench the * proceedings thereof must means a reall be onely in the Upper Bench, to which action may re-

ceive processe out of the upper Bench. 2 Inst. 23.

court and to no other it doth properly belong after it is thither returned.

BUt a writ of Error upon a judgment had * in the Upper Bench must be * *This by the returnable in the Exchequer chamber; 1sta. 27. Eliz. and the cause of Errour is only heard 2a. 8. and see and determined before the Lord Cheife there in what Justice of the common Bench, the actions and for Lord Cheif Barron of the publike Ex- what causes, chequer, * and the rest of the Judges and Barrons who are of the Coife of * which justices those two courts, and not before the * Barons or any justices of the court of Upper Bench 6 of them being where the cause formerly depended, of the coife have and Received its judgment. power to examin*

If the Error be found and allowed by them, to be sufficient and good, then the said judgment is by their full confession and judgment to be reversed and made void.

But take notice, that notwithstanding the reverfall thereof, it takes not away the Plaintiffs cause of action for the Plaintiff may commence a new action against the Defendant for the same cause, if he so think fit. Note Further he shall take advantage of his first action in case of statute of Limitation pleaded if he commence his suite again within a yeare and a day.

If the error be not found good and allowed, then is the former judgment affirmed, and further costs for Execution allowed to the Plaintiff, Who may presently sue forth execution out of the same Court where the judgment was obrayned either against the defendant or his sureties as he thinks best, and prosecute against them either by *seire facias*, &c. as in the case of speciall baile, as above, or by any action of debt: but if

any writ of Error be sued in any other action then an action of debt, no baile is required.

The Fees in this case are very uncertaine, and cannot be expressely set downe, but the heads of them, according to their proceedings, are as follow.

For search of the Record to find the Error.

For the Copie of the Record.

For the Writ of Error.

For the Lord Cheife Iustices Fee.

For putting in Baile.

For certifying the Record.

For assigning causes of Error.

For an *Habeas Corpus*.

For the allowing.

For the returne.

For the *Superfedeas*.

For the Copy of the Writ of Error.

For drawing *Diminution*: if need require.

For the Copy thereof.

For Entering the Errors, and Plea.

For a *Certiorare*: if need require.

For a *Certificat* from the *Cassos Brevium*.

For entering the same, and *Diminution*.

For the warrant of attorney.

For the the Copies of the Books for the Iudges.

For Counsellors Fees.

For affirming the judgment.

For the Copy thereof.

For the *Scire Facias* and entrying.

For filing and returning.

For Attorneys Fees.

Cum multis aliis que nunc, &c.

Note that if upon any judgment recovered and had against the defendant, helpe taken in Execution; or have his goods taken, or his Land Extended for the same; and upon full payment or satisfaction of

the

the debt and Costs, the plaintiff either in person or by his attorney, do acknowledge satisfaction upon Record in the said Court wherein the judgment was entred; and if the defendant at no time, from thenceforth or after make a Release of Errours to the Plaintiff, and that there be good cause of Errour found in the said judgment, the Defendant may bring a writ of Errour upon the said judgment, and upon arguing thereof, (as before the Errours being allowed by the Judges and the judgment thereupon reversed) the defendant may sue forth a writ of Restitution against the Plaintiff and recover back againe the full debt and costs of suit specified in the said judgment; but if he hath made release, he is void of remedy.

And take notice further, that if there be a judgment had and recovered against the Defendant by way of *Nisi Prius*, and verdict of Twelve men, Then unless he can find some cause in the Originall on the entering or giving of the said judgment after the Verdict so given and had, he may be admitted to sue forth a writ of Errour but get no advantage thereby; for by many statutes, and particularly the Statute of *Leofailes* many great faults misprisions, or causes of Errour, had or committed in the prosecution of the said cause before the said verdict, are taken a way.

Observe further, that if the Defendant be outlawed after judgment, and there be good cause of Errour to be found as well for or in the said judgment as Outlawry, the Defendant may bring a Writ of Errour and be bayled for both; and have a *Supersedeas*, as well for the safeguard of his body as his goods, before they be arrested or taken upon the same. Note, this is intended of a judgment by confession or default before triall, else *Supersedeas* lyes not.

NOW because we have omitted to speak of acknowledging of satisfaction where the debt is satisfied

and

and Judgment had, whereby the Defendant in Case the satisfaction be not acknowledged may be in danger in paying twice, one and the same debt; therefore observe the ensuing rules.

When you are to acknowledge satisfaction, be sure to have a sufficient warrant for it from your Client, and likewise let the Defendant seal a release of Errours for the reason before alleadged.

If it be in Terme time, get the Crier to bring the Roll into Court, and lay it before the Secondary, with the cause ready before him, and pray him to enter satisfaction, which the Secondary of that Prothonotary in whose Office the cause was entred, will doe you, paying the Fees as follow.

Note if the Plaintiff be dead, you must produce a will proved or Letters of Administration.

To the Crier for bringing in the Roll 6 d.

To the boxe if the debt be not above forty pound

6 d.

If above forty pounds for every hundred pound,

1 s.

To the Prothonotary 2 s. 4 d.

To the Secondary 4 d.

For the Attorneys fee 3 s. 4 d.

HAVING gone thus far in action of Debt it rests now we should speak something of a Wager at law, which is a plea usuall by the Defendant where an action of Debt is brought against him, either for money lent, or upon a Book-debt, or upon detinue, or any other action of Debt which is not grounded upon speciality (unlesse it be where an account hath formerly been before Auditors) in all which cases the Defendant may

may wage his Law; and there are two ways of waging Law.

Note It ought to be *Duodecima*, and Mag. Carta cap. 28. faith *sine testibus fidelibus* 2. Inst. 44.

Note in account before one Auditor the Defendant may wage his law, for 'tis out of the statute of W. 2. cap. 11. but if the account be before Auditors according to that Statute, they are Iudges of record, and therefore the Defendant cannot wage his Law. 2. Inst. 380. 20. H. 6. 16.

The first is called *Lex justantur*, which is when your Client will presently upon pleading come into Court and swear that he oweth or detaineth nothing, in which case it behooves you to have your Client ready, at the time when you plead, and the next day, or second bring him into Court, and let him do his Law, in which case the Plaintiff cannot become nonsuit; but upon a wager at Law at a day assigned he may be non-suited.

Formerly the plaintiff needed not to have had his Count recorded, and then upon a *Lex justantur*, he might have been nonsuit. 2. H. 4. 13. but upon a *Lex justantur*, the Plaintiff may imparle untill a day in another Term. 3. H. 4. 20. but Brook title *Ley Iager* 85. makes a Quere, if it be the use at this day. vi. 3. H. 6. 49. 50.

Note *Lex justantur*, cannot be after a generall imparlance, nor doth an Essoyn lie in that case. vi. 3 H. 6. 13.

FOR the other kind of wager of Law, which is *Lex ad diem*, where a day is assigned, there is to be given fifteen dayes at the least after the Law pleaded for doing thereof, that is, fifteen dayes after the coming in of your Imparlance, at which time, if your Client be not ready to doe his Law, he may be Essoyned (that is,

is, to be excused for that time) and have a longer day to doe it, which you must do upon the Essoyn day of that return, wherein your Law should have been done in Court.

Note that the Plaintiffs Attorney must ever look on the days of Exceptions, in case there be no Essoyn cast to enter a *Ne recipiatur*, but if there be an Essoyn cast, then to adjourn it, and to look to the continuances, as this, and the nature of the Actions, the Essoyns are cast in require.

Note further, that upon an Essoyn cast, if it be not adjourned by the Plaintiff, he may be non-suited, as is before shewed.

If an Essoyn be cast where it will not properly lie, you may have it dissolved, which is called Quashing, which shall return the Defendant or Tenant default.

Note the Tenant or Defendant may (for the most part be Essoyned upon every originall Writ before appearance, with cause or without cause, whereby doth ensue great delay to the Plaintiff, and sometime the Defendant may be Essoyned after an Essoyn in Action reall (of which we shall hereafter treat more at large by it selfe.) The Tenant for life at the return of the originall Writ may be Essoyned, and then the Defendant must adjourn the same, wherein must be given common days of return, and at the day given by the Essoyn, the Tenant may demand the view, wherein must be given other days of return, and at the day of

view, the Tenant may be Essoyned again, and then he may pray in aid of him in the Reversion, and at the return of the Summons *Ad Auxiliand.* he that is prayed in aid, may also be Essoyned for nine Returns, at which

I think the Essoyn upon the view is for the Attorney vi. H.

time the first *Tenant may be Essoyned againe : And all these delays the Tenant may inforce the Defendant to suffer. ** If it is true in case of voucher Hob. 46.*

Note that in all reall Actions upon the Summons, the Tenant may be adjourned by the Demandant unto the ninth return following, Inclusive, but of this more in its proper place.

The Fees incident to the wager of Law and Essoyns, Exceptions and Adjournments follow in a Table amongst other Fees.

Note that many of these Actions of Debt are brought in inferiour Courts, as in the Sheriffs or Mayors Court in London, and in other Corporations, where they hold Plea by their Charters for very great Summs, where the Defendant for delay or otherwise doth usually bring a *Habeas Corpus* or Writ of privilege, which doth remove both the Body (if in prison) together with the Cause.

This *Habeas Corpus* or Writ of privilege, must be made by one of the *Prothonotaries* Clerks, and must be signed by one of the Judges of the Court, and after by the *Prothonotary*, and after sealed and carried under seale, and delivered to the Judge or Steward, or other Officer in cheife, of such inferiour Court where the Cause is depending, where, upon allowance of it, they returne it, and certifie the Causes, which done, he that brings the *Habeas Corpus*, must put in baile above, before the Judge most usually that signes the Writ, such as the Judge shall approve of, when he sees what the Causes are.

But

BUT if the party doe not appear at the returne of the said Writ, and put in good baile in some short time (for they cannot put in common baile , though the Action be never so small) you may have a *Procedend.* to carry back the Cause or Causes to the Court below from whence they were removed , thereby to be proceeded into Judgment.

See for these procedendo's good directions by the stat. 21. *Hen.* cap. 23.

The Fees of a *Habeas Corpus* are as follow.

	s. d.
To the Clark of the Writ	0-8.
To the Prothonotarie for signing it	1-4.
For the Seale	0-7.
To the Iudge for his hand thereunto	4-0.
For the Attorneys Fee	3-4.
For allowing the Writ	2-8.
For the return of the first Cause.	2-6.
For every other Cause	1-0.
For a bill of <i>Multas causas</i> if in London for search	0-4.
To the Serjeant, if in London, for his Fee at least	10-8.
For putting in baile before the Iudge for the first Cause	10-0.
For every other Cause	3-0.
To the Prothonotary for filing the Baile for the first Cause	6-4.
For every other Cause	2-0.
For the Attorneys Fee	3-4.

Now because there are many miscarriages in these *Habeas corpus*, whereby the Writs themselves become unusefull, in being not allowed, all which proceeds most usually from the mistake of title of the Corporation

tion or Court to which it is directed, I have thought fit to insert the titles of the most Corporations throughout *England*, as follows Alphabetically.

A.

St. Albons.

TO the Steward of our Burrough of Saint *Albons* greeting.

Atbnden.

To the Mayor and Bailiffs of our Burrough of *Aben-*
den in the County of *Hertsford*, greeting.

B.

Bristol.

TO the Mayor Aldermen and Sheriffs of the City of *Bristol* and to every of them.

Burgavenie.

To the Steward and Bailiffs of *L. Nevill*, Lord *Aber-*
gaveny of his Town of *Burgaveny*, greeting.

Bridgewater.

To the Mayor and Bailiffs of the Town of *Bridgewa-*
ter, greeting.

Bedford.

To the Maior and Bailiffs of the Town of *Bedford*,
greeting.

Bridgenorth.

To the Mayor and Burgesles of our Town of *Bridge-*
north, greeting.

Boston

Boston.

To the Mayor and Burgesses of our Burrough of *Boston* in the County of *Lincoln*, greeting.

Barnstable.

To the Mayor, Aldermen, and Burgesses of our Burrough and Town of *Barnstable*, greeting.

Banbury.

To the Bailiff of our Court of *Banbury*, greeting.

Barwick.

To the Mayor of the Town of *Barwicke* upon *Tweede*, greeting.

Batell.

To the Bailiff and Steward of the Liberty of the High Court of *Batell* in the County of *Suffex*, greeting.

Bath.

To the Mayor, Recorder, Aldermen, and Justices of the City of *Bath*, greeting.

Bodmyn.

To the Mayor, Commonalty, and Clerks of our Burrough of *Bodmyn*, in the County of *Cornwall*, greeting.

Buckingham.

To the Mayor, Burgesses, and Steward of the Burrough and Parish of *Buckingham*, greeting.

St. Edmonds Bury.

To the Aldermen Recorder and Cheife Burgesses of our Burrough of *St. Edmond Bury* in the County of *Suff.* and to every of them.

Bewdley.

To the Bailiff, Recorder, and Burgesses of the Burrough of *Bewdley*.

Bridewell.

To

The Compleat Attorney.

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To the Mayor, Commonalty, and Citizens of the City of London, and to the Governours of the Hospitall of Edward the sixth, late King of England, to wit, Christs Bridewell, and St. Thomas the Apostle, greeting.

Beverley.

To the Mayor, and Governors to the Town of Beverley, greeting.

Biddiford.

To the Mayor, Aldermen, head Burgesses, and to the Recorder, or his sufficient Deputy of the Town of the Burrough of Biddiford, and to either of them, greeting.

Newcastle upon Tyne.

To the Mayor, Aldermen, and Sheriff of the Town of Newcastle upon Tyne, greeting.

C.

Chester.

TO our Chamberlaine of our County Palatine of Chester or to his vice Chamberlaine greeting.

Cirencester.

To the Mayor, Aldermen, and Citizens of the City of Cicester, greeting.

Colchester.

To the Mayor of the Town of Colchester.

Canterbury.

To the Mayor of the City of Canterbury, and to either of them greeting.

Coventry.

To

To the Mayor and Bailiffs of the City of *Coventry*,
greeting.

Chipping-wiccomb.

To the Mayor, Steward and Bailiffs of the Burrough
of *Chipping-wiccomb*, greeting.

Carlisle.

To the Mayor and Bailiffs of the City of *Carlisle*,
greeting.

Chestenham.

To the head Steward, Bailiff of the Mannor of the
Burrough or Town of *Chestenham*, and to either of
them, greeting.

Chepstow.

To the Steward and Bailiffs of the Town of *Chepstow*
in the County of *Monmouth*, greeting.

Castle-Rising.

To the Mayor and Burgessees of the Town of *Castle-
rising*, greeting.

Chipping-Norton.

To the Bailiffs of the Burrough of *Chipping-Norton*,
or otherwise, to the Common Clark, or Deputy there,
greeting.

D.

Dover.

TO the Constable of our Castle of *Dover* and to our
Warden of our Cinque ports or to his Leivete-
nant, greeting.

Downehewot.

To the Mayor, Aldermen, and Recorder of the Bur-
rough of *Downehewot* otherwise called *Launceston*, in the
County of *Cornwall*, greeting.

Doncaster

Doncaster.

To the Mayor and Recorder of the Town of *Doncaster*, and to both of them, greeting.

Derby.

To the Mayor, Recorder preceding the last Mayor, and Town Clerk of the Burrough of *Derby*.

Downewicke.

To the Bailiffs of the Burrough or Town of *Downewicke* in the County of *Suffolke*, greeting.

Clifton, Dartmouth-hardnesse.

To the Mayor, Bailiffs, and Burgessees of the Burrough of *Clifton, Dartmouth-hardnesse*, greeting.

E.

Ely.

TO the Justice of Pleas within our Isle of *Ely*, held and assigned, greeting.

Exeter.

To the Mayor and Bailiffs of our City of *Exeter*, and to the Bailiff in Court of the said City, and to either of them.

F.

Ferriet neer Shrewsbury.

TO the Steward and Bailiffs of the Liberty of *Ferriet* behind the Town of *Shrewsbury*, greeting.

Fleet.

To the Warden of the Prison of the *Fleet*, or

to his Deputy there greeting.

G.

Gilford.

TO the Mayor of our Town of *Gilford*, greeting.

City of Gloucester.

To the Mayor and Sheriffs of our City of *Gloucester*, greeting.

Gravesend and Milton.

To the Mayor, Jurors, and Inhabitants of the Town and Parish of *Gravesend*, and *Milton* in the County of *Kent*, greeting.

H.

City of Hereford.

TO the Mayor of our City of *Hereford*, greeting.

Hebson.

To the Mayor and Burgesses of our Burrough of *Hebson* in the County of *Cornwall*, greeting.

Haveringe.

To the Steward of our Mannor of *Haveringe Athewrie*, greeting.

Higham-Ferries.

To the Mayor and Aldermen of our Town of *Higham-Ferries*, and to either of them, greeting.

Hertford.

To the Mayor and head Burgesses of our Burrough of

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of *Heriford*, and also to the Steward in Court of Record there, greeting.

Huntingdon.

To the Maior and Bailiffs of the Town of *Huntingdon*.

I.

Ipswich.

TO the Bailiff of our Town of *Ipswich* in the county of *Suffolke*, greeting.

Great Irnemouth.

To the Bailiffs of the Town or Burrough and Liberty of great *Irnemouth*, greeting.

K.

Kingston upon Hull.

TO the Mayor and Sheriff of our Town of *Kingston upon Hull*, greeting.

Kingston upon Thames.

To the Bailiffs of our own Town of *Kingston upon Thames*, and Steward of the Town-Court there, and in the absence of the said Steward, to the Bailiffs and Recorder of the said Town, or to two of them, greeting.

St. Katharines next the Tower.

To the Steward of the Masters, Brethren, and Sisters of *St Katharines* behind our Tower of *London*, in Court there, greeting.

L.

Lincoln.

TO the Mayor and Sheriffs of the City of *Lincoln*, and to either of them, greeting.

Ludlow.

To the Bailiffs of the Town of *Ludlow*, greeting.

Lanc.

To the Comissioner for the keeping of the seale of County Palat. of *Lanc.* or to his Deputy there greeting.

Litchfield.

To the Bailiffs, Burgesses, and Citizens of the City of *Litchfield*.

Kings Lenne.

To the Mayor and Recorder of the Town or Burrough of *Kings Lenne* in the County of *Norfolk*, and to either of them.

Kings Lyn.

To the Mayor of our Towne of *Kings Lyn*, in the County of *Dorset*.

Leicester.

To the Mayor, Bailiffs, and Burgesses of the Town of *Leicester*, greeting.

Lidford.

To the Mayor and Burgesses of the Burrough of *Lidford*.

M.

Maidstone.

TO the Mayor of the Town and Parish of *Maidstone*.

Monmouth.

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Monmouth.

To the Mayor and Bailiffs of the Town of *Monmouth*.

Kings Molcomb.

To the Mayor and Bailiffs of the Town or Burrough of *Kings Molcomb*.

Mincholts.

To the Burgesses of the Burrough of *Mincholts*, in the County of *Somerset*, greeting.

Marleborough.

To the Mayor and head Burgesses of the Burrough of *Marleborough*, greeting.

Middleton.

To the Steward of our Court of *Middleton* behind *Sittinborne*.

N.

Norwich.

TO the Mayor and Sheriffs of the City of *Norwich*, and to every of them, greeting.

Newport.

To the Mayor, and bailiffes of the burrough or Town of *Newport*.

Northampton.

To the Mayor and bailiffs of the Town of *Northampton*, greeting.

Nottingham.

To the Mayor and Sheriffs of the Town of *Nottingham*, greeting.

Newarke.

To the Mayor and Aldermen of the Towne of *Newarke* upon *Trent*, in the County of *Nottingham*.

O.

Oxford.

TO the Mayor and baliffs of the City of *Oxford*, greeting.

P.

Plymmouth.

TO the Mayor of the Burrough of *Plymmouth*, greeting.

Plymton.

To the Mayor bailiffs, and burgesles of the burrough of *Plymton*.

R.

Reading.

TO the Mayor and burgesles of our burrough of *Reading*, greeting.

Rochester.

To the Mayor, Aldermen, and Citizens of our City of *Roffen*, and to either of them, greeting.

S.

Sudbury.

TO the Mayor, Aldermen, burgesles, and Steward, of our Town of *Sudbury*, greeting.

Stafford.

To the bailiffs and burgesles of our Town of *Stafford*, greeting.

Southampton.

Southampton.

To the Mayor and bailiffs of our Town of *Southampton* in Court there, and also the Keeper of our Goale within the same Town, or to his Deputy, or to either of them, greeting.

Salisbury,

To the Mayor, Aldermen, and burgeses, of the Burrough of *Salisbury*, greeting.

Southwarke.

To the Steward in Court and Mayor of the comminallty, and citizens of the city of *London*, and burrough of *Southwarke* in the county of *Surrey*, or to his Deputy, greeting.

Shrewsbury.

To the Mayor of our Town of *Shrewsbury*.

Stratford upon Avon.

To the bailiffe of our burrough or Town of *Stratford upon Avon*, and also to the head Alderman of the same burrough, or Town and common clark there.

Southmolton.

To the Mayor and head burgeses of the burrough of *Southmolton*, greeting.

T.

Talboth.

TO the bailiffs in court of *Talboth* or Town of *Bishop Lenne*, greeting.

Tavestocke

To the Steward or bailiffs in court of the Earle of *Bedford*, his liberty of *Tavestocke*, greeting.

Torres.

To the Mayor of the burrough of *Toynes*, greeting.

Tower of London.

To the constable holding the place of the Tower of *London*, and also the Steward of our court there, greeting.

Truroe.

To the Mayor and burgesses of the burrough of *Truroe*, in the county of *Cornwall*.

Trematon.

To the Steward of *Trematon* in the county of *Devon*, or to his Deputy; holding the place there, greeting.

Torrington.

To the Mayor, Aldermen, burgesses and Steward of the burrough or Town of great *Torrington*.

V.

Uske.

TO the Mayor and bailiffs of the Town or burrough of *Uske*, greeting.

W.

Westminster.

TO the bayliffe of the libertie of the late Deane and chapter of *Westminster*.

Wallingford.

To the Mayor and burgesses of the burrough or Town of *Wallingford*, greeting.

New Windsor.

To the Mayor, Aldermen, bailiffs, and Steward of the

the burrough of *New Windsor*, in the county of *Barks*,
to either of them, greeting.

Woodstock.

To the Mayor and burrough of new *Woodstock*.

Wye.

To the Steward in court of the Mannor of *Wye* in the
county of *Kent*, greeting.

Witteroll.

To the bailiff in court of *Witteroll*, greeting.

Winchester.

To the Mayor, bailiffs, and commonalty of our city
of *Winton*, greeting.

Worcester.

To the Maior, Recorder, and Aldermen of our
city of *Worcester*, greeting.

Wenlock.

To the bailiff and Steward of the Town and liberty
of great *Wenlock*, greeting.

Wigmore.

To the Steward and bailiff of the Town and bur-
rough of *Wigmore*, in the county of *Hereford* gree-
ting.

Warwick.

To the bailiffs and Recorder of our burrough of
Warwick, greeting.

Westbich.

To the Keeper of our Prison and castle of *westbich* or
to his Deputy there being, greeting

These are the severall titles of severall corporations
which happily may some of them alter in some particu-
lar, by reason of renewing their charters and having
larger Grants, by which they are incorporated anew,
and which may alter the title, of which the Attorney
must

must the best he may, informe himself.

Some few rules have been omitted, which concerne what hath been premised concerning actions of debt, and may be of such use in other actions; which take as followes, and first of Amerciaments and of the Estreating of them.

Note that if the party be arrested, and at the return of the Writ the Sheriff return (that he hath taken the body of the Defendant which he hath ready,

** In this case upon such a returne you may bring an action upon the Case against the sheriff for his false returne, for if he hath taken a baile bond according to the statute he ought to make his returne accordingly.*

&c.) and yet the defendant appears * not, you may if the Sheriff will be so content, take the bond of appearance given to the high sheriff, and have it assigned to you, and so you shall be inabled to sue the Defendant and his Sureties in the high sheriffs name, or if you will not so do, or the sheriff will not let you have the bond, then you must give the sheriff a day by rule to bring in the body, &c. in the Prothonotaries remembrance, which if he do not, he shall be amerced, and then you may sue outan *Habeas Corpus*, with the Prothonotaries Clark and if he bring him not in upon that, you shall continue amercing of him, and in case

the sheriff returne that he is (*Languidus in prisona*) that is to say that he is so sick he cannot bring him, then if it be found a delay, issues forth the *Duces tecum* &c. and still upon the amerciament you shall increase issues untill you force an appearance: but you may have your *Habeas Corpus*, and also give your rules for amercing the Defendant as well in the Philizers, as in the Prothonotaries office.

When you come to the estreating of your amerciaments

ments you must see them entred with the Philizer or
 * Prothonotary where the rule was given, and then the Clark of the warrants through whose office his prothonotaries Rolls passe, whereby he may take notice of the Defendant his (*Misericordia*) or being in mercy upon Judgements, will certifie the amer- ciaments as he doth all other of that nature of course into the Exchequer; But if it be in the Philizers office, you must get a certificate from the Philizer to the Clark of the Warrants, who will returne it into the Exchequer where the Sheriff shall, when he passeth his account, be inforced to pay it.

*If in the Pro-
 thonotarys re-
 membrance, you
 must carry it to
 the Clark of the
 Warrants and
 get him to certi-
 fie it into the
 Exchequer.*

NOW if the Sheriff who made the arrest be out of his Office before you make your proceed or have appearance, you shall have a writ called a *Distringas super vicecomitem*, that is to say, a deltraining of the late Sheriff, which writ must be made out of that office whence the last proceedings were had.

NOTE, that every Attorney, Clarke, or Officer of the Court, may have an attachment of Priviledge which is to be made in one of the Prothonotaries offices, and must be made returnable at a day certaine, and is as effectuell on their behalfe as an originall, for if the Debt be fineable you save the fine, and although the Debt be small, or that it be any other action, yet shall you hold him to speciall bayle, and upon a *Cepi* returned, you may proceede to amerce the Sheriff as is in other Processes.

Note

NOTE, that if you cannot arrest the party upon your first proceſſe taken from the Philizer, you muſt be ſure to ſee them ſo carefully continued, which coſts you four pence for each terme from the time of taking them forth, for if upon a ſecond Writ the Defendant finde your Writ diſcontinued he may enter a diſcontinuance, and the want of any one continuance is Errour at the time of the Judgment.

I think *a non continuance* is not helpt by any ſtatute before the 21. Jac. but if Judgment be given upon default, and a Count be wanting And Errour brought, it ſhall not be amended upon motion, as it was adjudged in Tr. 1652. *CB. in Breckes caſe.*

Note that when you deliver unto the Defendant his Attorney, the copy of your Declaration, you are to ſhew your Bond, Bill, Will, Letters of Adminiſtration, Indenture, or other writings under ſeale, whereby you intitule your ſelfe, and this, for that you have (*A proſert hic in curia*) of theſe Writings in your Declaration, which is in ſubſtance an acknowledgment of them to be brought into Court, but if the Defendants Attorney receive the Declaration and then call not for ſight or hearing of the Bond, &c: and after pleads or takes an imparlance, you are not bound afterwards to ſhew it him.

Obſerve further, that if you bring your action againſt two or more for one Debt due upon one ſpecialty, when you draw your (*Præcipe*) for

*the Curſitor take heed whether your ſpecialty be joynly or ſeverally; joynly thus, (we binde us our Heires Executors, &c. or (*Ob- ligamus nos hæredes, &c.*) not having

* *Otherwise it is pleadable in a-
baſement.*

having therein the words, either of us, then your originall must be, and so your Declaration (that they render to the Plaintiff so much money, &c.) but if the specialty be, as is most usually, joyntly and severally, then must your *Præcipe* be severall, and then must you make delivery, and enter so many severall Declarations as there are Defendants in your Writ.

NOte that in actions of Debt upon *Emisset*, for wares or Marchandizes, or other things upon *Mutuatius*, for money or other things lent upon an *In simul computasset*, Actions of Trespasse, Battery, or upon the case, &c. you are not tyed to lay the certain day; but you may lay it any time after the cause of Action accrued, and before the *Teste* of your Originall, but in an *Ejectione firme*, the date of the Demise must be your guide, from which you must not vary.

NOte that as I said before, there are some Actions reall, some personall, some mixt, whereof some are locall, as tyed to be layd in the County where the cause of action accrued, every personall action is an action of Debt, * trespassse, Covenant, Battery, &c. and may be commenced and layd in any County whatsoever, according as the Plaintiff pleaseth, although both the Plaintiff and Defendant do dwell out of the same, But every reall and mixt action is to be laid in the same County where the cause of the said action arises as before, or where the lands and tenements do lye, &c.

* accounts of
trespas quare
clausum fregit
must be locall.

The like course must be taken to continue an
issue

issue joyned and entred upon the roll from tearm to tearm, as before was shewed in the case of imparlances.

NOte that when you declare upon severall specialties, in the close of your Declaration upon the (*Profect hit in cur.*) you must mention their severall dates, but some thinke it not necessary.

NOte also, that if severall Defendants appeare by one Attorney, who are bound in a bond joyntly and severally, if they declare severally against them, yet the condition must be recited but in one of the Declarations; but if they appeare by severall Attorneyes you must insert the condition to the Declarations.

AND note, that in many of the foregoing actions of Debt, you shall do very well, it is the safest way for your Client to make actions of the case of them by *Indebitas, assumpsit*, where if you prove the money lent, or wares delivered, &c. the law implyes the promise, and in that case the Defendant is barred from waging his law.

Note for rent, an action upon the case will not lye.

ANd note further, that if you bring an action of debt against one within age, he may plead in bar that he is * within age, but in case it be for necessities as Meate, Drink, Apparrell, &c. there * is no bar to the Plaintiff.

** for the cause of action ariseing when he was within Age. * That he was within age at the time of the contract.*

And

And in case any one is sued who is within age, he must * defend himselfe by his Guardian, and if he will sue, it must be by his *Prochin amie*, or it may be per Guardian *Hutt. 92.* he cannot defend per *Prochin Amy. ibid.*

NOte, that you may sue an * Heire as well as the Executor or Administrator for the debt due by the Obligor; but in case you cannot finde any lands to discend unto him, he pleading *Viens per discend* (that is, hath nothing discended unto him) he shall not be charged.

Note, If by the specialty the heir be named; otherwise not.

If money be payable upon demand, there in that case it must be demanded before you can sue, and the Plaintiff must lay a Demand in his Declaration, and the Action accrues by virtue of that Demand.

Note further the Law allows of distinctions in these cases, for when the promise ariseth upon a precedent debt, *licet sepius requisit.* is sufficient.

NOte, that if a man shall bring an Action either upon bond, bill, or otherwise, upon which he formerly had judgement, the Defendant may plead the former judgement in bar, and it may be held good.

NOte, how and to what cases you may plead the Statute of *Limitations* which will guide you to bring your actions within the time limited, or to cause you to forbear bringing them at all, all Actions of Debt, Account, Detinue, Trespasse, * *There are many distinctions to be made hereupon, too large to be here recited. See Banks his reading upon this Statute.*

Replevins

Replevin, and all other Actions of the case, unlesse for words, must be put in Suit within six years after the cause of Action; all Actions of Assault and Battery, and Imprisonment, are to be put in Suit within foure yeares after the cause of Action, and all Actions of the case for scandalous words within two years after the words spoken, if in any of these cases they be brought after the time limited as above, the Statute of 21. *Iacob*i pleaded, is a good Plea in bar to any of them, no time limited for Specialties. *Vi. 2. Inst.* 107.

If a man Arrest another, or cause him to be Arrested in another mans name, without the consent of the Party in whose name he is arrested, the Statute gives an Action of Debt to the Party so arrested.

This is *per Stat. 8 El.* and it is restrained to arrests out of particular Courts mentioned in the same Statute.

An Action of Debt lyes by the Statute of 2. *Edward* the sixth, *Cap.* 13. For a Parson against his Parishoners for not setting out of tythes, upon which Action the Parson shall recover the treble value of the tythes so carryed away untythed. See for this good learning in 2. *Inst.* 648. &c. cc.

An Action of * Debt by the Statute of 32 *Henry* the 8. Chapter the thirtyeth, lyes against an Attorney for not filing of Warrants of Attorney, in the Causes he is towards.

*The Forfeiture
is ten pounds.*

Where no place of payment is set down in a bond, there the Obligor must be enforced to find out his Obligee, to pay him the money. See the restrictions hereupon, 1, *Inst.*

We now proceed to Actions of Detinue, wherein we shall need to say the lesse, for that the same Rules that have been given in Actions of Debt, either in relation to the Processe or manner of declaring, do hold in
this

this, the one being in the *Debet* and *Detinet*, and the other the *Detinet* onely : And this Action properly lyes where a man delivers Goods or Chattels to another to keep, and the Party to whom they were so delivered, refuses to deliver them.

And observe that in this Action of *Detinue*, you ought to ascertain the thing, as a Horse, Cow, or other Cattell, or Chattell, naming them, and making them certaine, for that the Plaintiff is to recover the thing detained, and therefore it must be so certaine, as it may be known; for money delivered in a Bar, an Action of *Detinue* lyes not, but an Action of Account; and your Originall in this Action runs thus.

TH E Keepers, &c. To the Sheriff of H. greeting,
Command I. G. lately of L. in the County of H.
Yeoman, that justly and without delay, he render T.
B. one Cow, which he unjustly detains, &c.

If for a mans Evidences of his Land, in a Box or Bag sealed up, in which case also an Action of *Detinue* lyes, then the Writ runs thus.

THAT justly and without delay he render him one Box, with Deeds, Writings, and other Minuments in the same Box contained, which he unjustly detains, &c.

The Defendant hath not in this Action that variety of Pleas as before in Debt, the most usuall Plea being (that he detains the thing sued for) and upon this he puts himselfe upon the Country to be tryed, and the Plaintiff in like manner, &c.

Note that in this case, if the Plaintiff have a Verdict his Judgement is a Recovery of the thing detained; or the value thereof; *Note, this is in case the Jury find not the value upon the Verdict.*

in which case, as also where the Judgement is had by default for want of pleading, there is after the Judgement had, a Writ of Inquiry awarded, to inquire of the value of the thing detained: Upon the return of which Writ of Inquiry, what value the Jury find the thing of, and what damages they give him for the detainer of it, is together with increase of Costs entred up for Judgement.

Note that a man may wage his Law in an Action of Detinue, as formerly in debt was shoven, wherein the same course for the manner of the Wager of Law, is to be observed as before. *Note this is but in some cases, 1. Inst. 295.*

But it is otherwise in case you declare for one Evidence in speciall, delivered by the Plaintiff to the Defendant; in this case the Defendant shall not wage his Law, *Vi. Belfreds Reports fo. 29.* some speciall case, concerning Detinue.

Note that in case of Evidences detained, it is not proper for the Executor, nor hath he any Right to this Action, but the Heire who is to have the Lands.

Note that if it be of any thing delivered to be kept, whether by the immediate party that brings the Action, or his Father, Ancestor, &c. Properly this Action lyes if detained, but otherwise an Action of Trover and Conversion.

In the next place we come to Actions of Account. Vide Co. Lit. 172.

THIS Action lyes upon severall occasions, as against one that is Guardian in Socage, against one as Receiver

Receiver of Moneys, either by way of Rents or otherwise, or as Bayliff of an Office, or as Bayliff in generall: In all which cases, you must be sure to frame your Action rightly, by informing your selfe for what time he continued Bayliff, Receiver, &c. Of what his charge was, and what it amounts unto, and when he entred upon such his charge.

To begin with Guardian in Socage, your Proccesse are by Summons, * *Capias ad computand. &c.* And you declare upon the Statute of Marlebridge, the seventeenth Chapter, of a Plea, that whereas by the common Counsell of the Kingdome of our Lord King of England; It is provided for, that the Guardians of the Lands and Tenements which are held in Socage, should render their reasonable account of the Issues and Profits of the said Lands, to the Heires of the same Lands and Tenement, when they come to full Age, &c. This full age is fourteen years. *Co. Lit. 89.*

An account with Guardian in Socage did lye at common Law, and the Statute is but in affirm. Co. Lit. 89. Common gift with Guardian in Socage, Co. Lit. 89. d. Vi. the reason in 2. Inst. 380.

The intendment of Bailiff is one that hath the Administration and charge of Lands, Goods, or Chattels, to make the best benefit for the Owner; against this Person properly lyes an Action of Account, for the profits which have been made or raised, during the time he hath had the care of them *Vide 2. Inst. 380.*

And observe this, that a Bayliff may be charged to account, and accordingly doth account, and upon account, nothing doth appear to be arreare in his hands, but rather the Plaintiff indebted to him, in which case the Bayliff shall bring his Action of Debt, for the Surplusage of what he hath expended and laid out over and above his Receipts.

If I appoint a man to receive money to my use, to render me an account, I shall have my Action of account against him for the said moneys, he also having his reasonable Expences and Disbursements. *Note, Co. Lit. 172. a.* it must be between Merchant and Merchant, *ibid.*

Where a man declares against one as receiver of moneys, and he must ascertain by whose hands the money was received; which lyes not against a Bayliff, * and if the receipt be from any hands, other then the party Plaintiff, the Defendant shall not wage his Law, but if it be alleadged to be received by his own hands, and not by another mans hands, in this case the Defendant may wage his Law.

Or his wife or his Commoigne,
1. Inst. 295.

Where there be two Coparceners in Merchandize, that occupy and Merchandize in Common, by the Statute, one shall have his Action of account against the other, they being both named Merchants. *Co. Lit. 172. a. 186. a.*

Where there be two Joynt-tenants, and the one makes the other Bayliff of his Moyety, in this case, he that makes the Bayliff may bring his Action of account.

The Executors of a Bayliff or Receiver, are not chargeable with an account. Executor at the common Law could not have account, but the Stat. *W. 2. ca. 23.* gave the Action of account to Executor, the Stat. *25 E. 3. ca. 5.* to Executor of Executors, and Stat. *31 E. 3. ca. 11.* to Administrators, *Co. Lit. 89. b.*

An Account may be brought against the Collectors for money given to the use of the poore.

Note that if a man brings his Action of Account against one as Bayliff, and the Defendant to his Action pleads, that he was never his Bayliff to render an Account,

Account, &c. And upon that Issue joyned, and upon the tryall a Verdict for the Plaintiff; in such case the Iudgment is, that the Defendant shall account with the Plaintiff of the time and profits aforesaid, &c. And that he be in mercy, because he did not sooner account.

Upon this Verdict and Iudgement, the Court assignes Auditors, before whom the Defendant is to account upon such a day or time, as the Auditors shall appoint to heare the Account; and in the *Interim* the party either puts in baile to account, or otherwise stands committed to the Fleet.

Note that if the Defendant acknowledge the Action, and that there be Auditors assigned by the Court, in this case he shall not be inforced to put in bayle.

There are two Pleas most usuall in these Actions of account, the one is (that he was never his receiver, &c.) And the other (that he hath fully accounted, &c.)

Note that the Auditors assigned by the Court, have power upon his accounting, to make him allowance of what reasonable Disbursements and Charges he brings in, as laid out, and if after the Defendant be over and above in arreare found by the Auditors, the Plaintiff may bring his Action of Debt, to which as is before said the Defendant shall not wage his Law.

In an Action of account a man may plead doubly, as where he stands charged to have received severall moneys, severall times from divers Persons, there he may plead as to part (that he stood not bayliff, &c.) and as to the other part (that he hath fully accounted, &c.) Upon the joyning of which Issue, it being double you say; Therefore as to the trying as well of this

Issue as the aforesaid other Issue formerly joyned; Command is given to the Sheriff, &c.

Note that an Action of account lyes against a Church-Warden after he is out of Office, by the succeeding Church-Warden to be brought.

1. *Inst.* 89. b. 90. Where an Infant within the age of fourteen yeares, being seised of Lands in Socage Tenure, a Stranger enters into the Lands of the Infant, and takes the Profits of the same, though he be not the next of Kindred, nor Guardian in Socage, yet the Infant shall charge him as Guardian in Socage; and it is no Plea for him to deem that he is the next of kindred, but he must answer to the taking of the profits, the Writ being that he should render his reasonable account of the Issues and profits, coming of the Lands and Tenements in S. which are held in Socage, &c.

Note that if it be for the profits of the Land, * for the time after the Infant is come to fourteen yeares of Age, he must be sued as Bayliff, and not as Guardian.

Note also that if any man have cause of Action of account, against any as Receiver and Bayliff, and dye, his Executors shall have this Action.

This action may likewise be brought in the County where the cause of action arises, and if so brought, it may be removed into the common Bench, at the Suit of the Plaintiff, by a *Pone*, without shewing the cause in the Writ, but it shall not be removed at the Suit of the Defendant, without shewing cause in the Writ of *Pone*, as if the Defendant have release, and then it shall be named in the *Pone*, &c.

An Apprentice shall not be charged with an action of account, but if a man have a Servant whom he commands to receive money, the Master shall have a Writ of account against him if he were his Receiver.

The Fees incident to this Action, and the proceedings thereupon, follow in a table amongst others.

Actions upon the Case.

THese Actions are very numerous, and grounded upon severall occasions, as for scandalous words, for promises not performed, for speciall Nufances, &c. The Processe upon them are, first an Originall, and then by way of *Capias*, if you can arrest upon the first Processe, if not, then you may proceed to the Outlawry, as before in debt, onely the charge will be more in respect of the length of your Processe, and for returne of those Writs, you must returne (that the Defendant hath nothing within my Bayliwick whereby he may be attached) this for the Originall: And for the *Capias* and other Processe (that the Defendant is not found within my Balywick.)

In Actions of the Case for words, you must carefully observe what the nature of the words are, what they import, the manner of speaking of them, and what the party Plaintiff may be any wayes damnified by the speaking of them, what his credite was, and how impaired, and take the whole words as neer as you can; and before you bring your Action, let the Witnesses set downe the words as they were spoken, and as they will be able to prove them, and the time and place when and where they were spoken, and before whom: This Action oftentimes miscarries, by reason the Attorneys weigh not well whether the words be actionable or not, & many times, though some part of the words taken by themselves may be actionable, yet the subsequent words may qualifie the sense of the precedent; as where a man sayes of another, that he is a theife, and hath stoll something of small or no

value: For generally where one stands charged by words for any theft, which is onely criminall and not capitall, there the party Plaintiff shall never enter Judgment, although he brings his action.

* *Note this is altered by the new rules.* * An Action of the case lyes against the Husband and Wife for words spoken by the Wife, but in case the Wife be arrested and not the Husband, you cannot declare.

This Action lyes in these severall cases following.

WHere one becomes Surety for another at his instance and request upon Bond, and he saveth him not harmlesse, but the Surety is inforced to pay the money, in this case he may bring his action upon the Case, wherein he must recite how such a time at such a place, at the instance and request of the Defendant, he became bound to such a one in such a sum, conditioned for the payment of such a sum at a day then to come, and that the Defendant in consideration thereof, did assume and promise to save him harmlesse; that notwithstanding the promise aforesaid, he hath been sued by the Obligee, and shew how and where and what he is damnified.

It lyes where a contract is made between two by word of mouth, either for the delivery of Corne, Cattell, or any Merchandize whatsoever, and the party that promises so to deliver it makes breach.

It lyes for money borrowed, when you would make sure the Defendant should not wage his Law.

Note that in all actions of the Case upon speciall promises, you must be sure to lay a good consideration to ground your promise on, otherwise it is said to be *Nudum pactum*, as where it is for Money owing by

by a stranger, and his Friend promises payment upon forbearance, there you must lay, that whereas such a one was indebted to the Plaintiff in forty pounds, and that for the more speedy obtaining of the said Debt; the Plaintiff intended to implead him, and that in consideration the Plaintiff would forbear to sue or implead the party owing the Money for such a time, the Defendant himselfe would pay it in case the other did not, and alledg forbearance, *Co. Ra. entr. 4 Co. entr. 2. Ra. entr. 11.*

It lyes for money promised in consideration of marriage, wherein the Plaintiff must aver, that he married her such a time.

To call a man a Bastard if he be the Eldest Son, and in a capacity at the time of the words spoken, to inherit an estate after his father, and be disinherited, an action lyes.

To call a * maid whore, or to say she hath a bastard, whereby she loseth her preferment in marriage, is likewise actionable.

To call a married wife whore would not formerly hold action at common law, but in *London*, by custome it hath, but *Quere* whether it will not now be actionable in respect of the Statute, that makes the crime capitall.

If a man speaks Scandalous words of any, for which is action brought against him; if the Defendant be able to make prooffe of the words spoken, he may plead a speciall justification; but if he plead such plea, and make it not good, the damages will be much aggravated thereby. *Co. enter 26.*

If the Defendant spake other words then what are layed in the Declaration, he must plead especially and traverse the word layd in the declaration, but *quere*, whether in both cases by this late act he may not plead the generall issue, and give the speciall matter in evidence.

Where

Where the Defendant pleads the generall Issue, which is not guilty for words scandalous, &c. there it rests on the Plaintiffs part, to prove the words as he hath layd them.

It hath been usuall, and yet is the course to arrest upon a * *Clausum fregit*, and then upon filing a new Originall, to declare specially in an Action of the case.

It lyes for the hire of a Horse, which is returned back, and the hire unpaid.

It lies likewise, where a man abuseth a Horse by immoderate ryding, or otherwise by misusing of him.

The party likewise that hires a Horse, if he have given earnest for the Horse, and that it be promised him, it shall be delivered unto him by such a time, and then he refuses to deliver him, whereby he is disappointed.

It lyes for the Master against his Servant, for leaving off his service, before the time contracted for to be expired.

Likewise for a servant in case the Master within just cause shall turne him out of service, before his time be expired.

It lyes for a mutuall contract made between two, by word of mouth, and to bind the same, a peice of money is given by the one to the other in earnest; now if either will not performe what is agreed upon, the other may bring his Action of the case.

The Warrantie must be expresse. It lyes, where a man upon sale of sheep, warrants them to be sound, and they prove rotten, or otherwise unsound.

Note it must be an expresse Warranty. * An Action of the case lyes where one sells a Horse, and warrants him to be sound, and the Horse proves to be unsound at the time of the sale.

It

It lyes against a Farrier, who shooes a Horſe and pricks him, whereby he growes lame. *Reg. 106. b. Hub. 94.*

It lyes where a man who is a Goaler, lets a Prisoner at large, and this as well as escape.

Where a man hath made a Distresse of Cattell, &c. and is driving of them to the Pound, and another comes and rescues them, an Action of the Case lyes.

It lyes against any that shall intice his Covenant Servant from him.

* If a man lose Goods brought in- *See some diffe-*
to a common Inne, or Hostrie-house, *rences between*
an Action of the Case lyes. *F. N. B. Co. l. 8. 32.*
94. b.

If a man deliver goods to a Carryer, and agree upon the rate for carrying, and they are lost, and miscarried, an action of the Case lyes.

It lyes for stopping of a Water-course through his Ground, whereby the Plaintiff watred his beasts and did other necessities, and if this be stopped either by Stones, Turfes, or otherwise diverted, an action of the case lies.

If a man stop up a * Way, whether
Cart way or Foot way, and another
hath right to that way, & can prescribe
to it, an action of the case lyes. ** Not unless it is
a common High
way.*

Where a man is to pay money, and gives a Bill of Exchange which is not excepted, but afterwards comes to be protested, an action of the case lyes.

Where a man sells another mans Cattell or Goods, or Merchandizes, and warrants them to be his own, an action of the case lyes.

An action of the case lyes against a Taylor, who doth undertake to make cloathes, and spoyles them, so that they are not usefull for the party they are made for.

It lyes against an Executor upon the promise of the Testator

Testator, provided there be a consideration to ground the promise on.

It lyes in the behalfe of a Commoner against any that hinder him from the use of his Common.

VVhere a man hath an Office granted unto him, and another either disturbs him in the Execution of his place, or otherwise receives the profits due to the office, an action of the case lyes. *Co. lib. 9.*

It lyes against a cheat, for playing with false Dice. *F. N. B. 95. d.*

VVhere a man disturbs the keeping of a Court Leet, an action of the case lyes, *33 H. 6. 16.*

It lies against an Under Sheriff for an ill or false return.

It lyes against an Under Sheriff, who makes return of Writs within any Liberty granted to another.

It lyes on the behalfe of a Physitian or a Chirurgeon for Phylick or performing a cure.

Where a man builds a house so neer his neighbours, or raises any shed or other out-house, or layes piles of Wood, or Stacks of Hay or Corne so neer his neighbours windows, as that they stop up his light, an action of the case lyes.

And for any other Nufance, whereby a man is any wayes damnified, as where a man builds a Stable or Privy-house so neer his neighbours house, that the smell thereof annoyes him.

It lyes against an Under Sheriff, for taking greater Fees then is allowed by the Statute, if he be not forced to bring his action upon the Statute of *H. 6.*

It lyes against one who shall break down a mans Wall or Sluce, whereby his Land comes to be drowned.

* *11 H. 6. 22.* It lyes for selling corrupt Wine
19 H. 6. 49. without warranting it to be good, for
2 H. 4. 76. that it is prohibited by Law. Note
 by *Fitz. Na. Br. 94. c.* the Action will
 not ly without speciall warranty. It

It lyes where a man hath pawned goods, and tenders the money due, and demands his goods, and it will not be accepted. *Fitz. 86. c.*

It lyes for not carefully keeping fire, whereby a mans house who is a neighbour comes to be burned either in part or whole.

It lyes for digging of Lime pits.

It lyes * against one for keeping a Dog that worries Sheep.

** Note it must be layd either ad mordent. con-*

suent. or suent, retinuit.

It lyes for a Solicitor for his Disbursements and Fees.

It lyes so many severall wayes for promises, as that they are not to be named in particular, but are to be drawn as the case falls out, only observe some particulars following.

It lyes where a man for mony lent upon forbearance, and promises to become security.

It lyes upon a promise to pay mony for land contracted for.

It lyes against any one that makes an arrest in a liberty not being Bayliff.

* It lyes for the Lord of a Mannor in ancient demesne against a Tenant that levies a fine above in the Common Pleas.

** Note that an Action of Disceit is the most proper.*

It lyes in the nature of an Action of Conspiracy, for one indicted of Felony, and afterwards acquitted.

It lyes against a Steward of a Court for not taking security in Replevin.

It lyes against the Husband and Wife for meat, drink, &c. had by the Wife before the intermarryage.

It lyes for a Keeper of a Prison for meat and drink had by a Prisoner.

It

It lyes against an Attorney or Clark of the Kings Bench for appearing or filing a bayle without Warrant.

It lyes likewise against an Attorney that shall do any act in any mans name, whereby the party is prejudiced in relation to the Law, without Warrant had.

It lyes for erroneous prosecuting a Writ of Execution.

It lyes also against an Officer who takes money by extortion.

It lyes for a rescue made upon a *Capias*, or other process whatsoever.

It lyes against the Sheriff for not returning a *Venditioni exponas*.

It lyes likewise on the behalfe of an Executor against an under Sheriff, for returning falsly a *Devastavit*.

Note If the Sheriff returne a *Devastavit* upon a *Sci. fac.* but not upon *Devastavit* returned upon a *Sci. fac.* and inquired *cor.*

If a man sells cloathes, and warrants them to be of such a length, if they hold not out accordingly, he which buyes them, may bring his Action upon the case.

If one take a mans cattell, and another take them from him, an Action of the case lies, by way of Trover and conversion for the cattell.

An Action of the case lies against Tenant at will, who commits wast by burning houses, or pulling them down, but not an action of wast.

Neither action upon the case, nor action of wast lies against him, for permissive wast, but for voluntary wast a generall action of trespass will ly. Co. 5. Rep. 13.

An Action of the case lies against a Bailiff for killing

ling or spoiling any of his Masters cattell. Co. 5. Rep. 14.

If a man deliver to another his Sheep to dung his land, or his oxen to plow his land, and he killeth them, an action of the case lies.

An action of the case lies against a Sheriff, where the Plaintiff hath a Charter of exception, that he shall not be impannelled upon any Jury, and shewes that to the Sheriff, and yet he impannells him.

If the Sheriff upon a writ of second deliverance to the Plaintiff of the distresse, and will not return the Writ, so that the defendant may constrain the Plaintiff to come and declare, so that he may avow, the Defendant shall have his remedy by action of the case against the Sheriff.

Action of the case lyes against a Sheriff, where he makes a *Præcipe* to one who is no Bailiff of the Franchise, who returns a Jury which is quashed, to the damage of the Plaintiff.

Where a Guardian pleads falsely for an Infant, or vouches one who is not sufficient to render in value to the Infant, the Infant shall have an Action of the Case.

An Action of the Case lyes against a Chyrurgeon, who undertakes to cure a man of a wound, and neglects it, Whereby a man grows worse, and makes it through his negligence incurable.

Where a man promises in consideration of an hundred pounds, or any other sum in hand paid, to enfeof another in such and such Land, by such a day, and doth it not, he shall have an action upon the Case.

There are many other cases wherein action of the Case lyes, which cannot be certainly recited, in respect of the various occasions of them; but in these before recited, and all others, the proceed is one and the

the same, onely your Declarations must vary as your Case requires; after your Declaration drawn, upon appearance made, you deliver it to the Attorney for the Defendant and most usually with an Imparllance, which done you enter it accordingly of that Terme you deliver your Declaration, upon one of the *Prothonotaries* Rolls, and then Docquet it, and keep the number roll by you, whereby you may be able to continue your Imparllance if need be.

The Terme following you give a Rule within some short time of the beginning of the Terme, with the Secondary of the Office for the Defendant to plead by such a day, or otherwise [the Plaintiff have Judgment. Or enter it your selfe upon a Common remembrance, of a Clarke of the office.

There is not much diversity of pleading * to this action, especially since the late Statute, the most usuall Pleas are either
 * *Note not guilty is a good plea in an action upon the case Sur promise.* Not guilty, or in case of promises, *Non assumpsit.*

Either of these being pleaded, you make up a copy of the Issue and deliver it to the Defendants Attorney, who is to pay for the Copy of the Issue, as before for the Declaration, four pence for every sheet, and also to pay for entring his Plea two shillings, that done, if you intend to try it, you must give warning to the Attorney of the Defendant when you intend to try it, and in order thereunto make out your *Venire Facias*, and get it returned by the Sheriff, and then sue out your *Habeas corpora* and so proceed to the making of your Record; and in all other things, both before, at the tryall, and after, as you are directed before in the case of Debt.

But in case they plead not, but let it goe by default, then upon the entring up of your Judgment you are to

to award a Writ of Inquiry of Damages, returnable, some returne the Terme * following, which done, you make out your Writ * *Or of the same Terme.* and procure it to be signed with the *Prothonotary*, and then Scale it, and be carefull to keep your number Roll, likewise of your judgement when you have Docquetted it.

Note that you are to give notice to the Attorney of the Defendant of the time when you intend to execute your Writ of * Inquiry, if you practise fairely.

* *Else your Inquiry will be avoided.*

And having so done, and brought your VVrit under Seale, and delivered it to the Sheriff, you may proceed upon it according to the time agreed on.

The Sheriff to summon an Inquest. who are to inquire what Damages the party Plaintiff hath sustained, as also for his Colts and Expenses of Suit.

The Inquest having passed, if the Sheriff draws a short schedule, and annexes it to the VVrit of Inquiry, and returnes the VVrit of Inquiry, which is called an Inquisition, which he delivers you upon payment of his and the Juries Fees.

Having your VVrit of Inquiry thus returned, and the Inquisition annexed, you must bring it to the Prothonotaries office, and there take it out in the common remembrance, together with the Return and Inquisition, and give a Rule upon it, which done, and the Rule out, you carry to the Prothonotary, and he taxeth your Colts, and then you pay him for it, and carry it to the Clark of the Judgements, and be sure you give him likewise your number Roll, and Term when the Judgement was entred, and he will make you out, either a *Capias ad satisfaciendum*, or a *Fieri facias* for your damages and colts. The Fees incident to this action, will follow.

Actions of Trover and Conversion.

THIS Action is called also an action of the case, and differs not at all in the Proceedings from what hath been said before, in Actions of the Case.

It properly lyes where the Defendant hath found any of the Plaintiffs goods, and refuseth to deliver them upon demand, or where the Defendant comes by the Goods, by the Delivery of any other then the Plaintiff, wherein he shall recover as much damages as the goods are worth.

It is not as in an action of Detinue, that the thing it selfe, whether Goods or Cattell shall be recovered, but Damages to the value of them.

Note that a demand is absolutely necessary to the action before it be brought. Where the Plaintiff cannot prove conversion.

In this action if the Defendant plead that he is not guilty, which is the most generall Plea in this action, the property of the goods must be proved to have been in the Plaintiff, before such time as they came to the Defendant his hands.

This Action is now very usuall, and takes place in stead of actions of Detinue, for in them the Defendant was at liberty to wage his Law, whereas this debars him.

In many cases a speciall justification may be pleaded to an action of Trover, as where a man justified the taking of it as a Stray, and refuseth not to deliver it, being a Horse, Sheep, or the like, upon payment for their Meat and keeping.

Many times in this action, the Arrest is made upon a *Clausum fregit*, and then file a new Originall, and so declare in Trover, or in case you cannot arrest, you may sue to an Outlawry.

Where

Where a man brings his action of Trover and Conversion against another, with whom he findes any of his Goods lost or purloyned here, if the Defendant bought them in open Market or Faire, and that they be tolled in the Book, this alters the property of the goods, and I can never recover them, but this must be specially pleaded.

Otherwise it is where they are bought privately and not in open Market or Faire, by this there is no property altered.

It is generally held, a mans shop is said to be open Market; but if Plate be stollen and sold to any other Tradesman, or in any other * shop, then the Goldsmiths to whom it is proved to buy it, it hath been held the property is not altered, but that the Parry loosing of it, may recover the value of it in Damages by action of Trover.

* Not if it be sold privately in a Goldsmiths shop, yet an action of Trover will lye.

All the proceedings in this Action are generally the same immediatly before going in all particulars, whether it be by tryall at the Assises, or by Writ of Inquiry; which Writ of Inquiry, Inquisition thereupost, as that also in case are to be filed by the Clark of the Judgements, with the *Custos Brevium*, after Judgement entred up.

In this Action you must be carefull of the dayes when you lay the Plaintiff to be possessed, and what time after you lay it to be lost, and what time after the Conversion.

Actions of Trespasse and Battery.

TH's action lyes where a man assaults another, and strikes, kick, or beat or do him any manner of violence, either with hand, foot, or with any

weapon, or throw any thing at him, or upon him, whereby he is hurt.

The Writs in Battery are by way of Originall, *Capias*, *alias*, &c. If not arretted upon the first Proces you may take out a *Capias* by continuance, or otherwise sue to the Outlawry.

Your originall Writ runs thus : Wherefore by force and armes on him the said Plaintiff at L. he made an assault, and him beate, wounded, and evill entreated, so that of his life he did despaire, and other harms to him he did, to the great damage of the Plaintiff, and against the peace, &c.

In some cases you adde (after wounded and Imprisoned) in case the party were kept in Prison, and then in the Court you name for what time.

In case you have the Party arrested, you must inform your selfe of the time when the Battery was done, and what the manner of the Battery was, and with what Weapons, and whether the party were Imprisoned, and what damage your Clyent sustained.

This done, and having an appearance (which is usually made on the Philizers Roll, if the Attorneys take not one anothers word in the Country, or put their hands to the Sheriffs Warrant for to appeare according to the returne of the Writ) you draw your Declaration, which is no more but a recitall of the Writ above, onely in the second place, when you count upon the Writ, you are to insert the time, and when you say by force and armes, you then adde (that is to say, with Swords, Staves, and Knives) and if the Party were Imprisoned, you then shew, how long and whether he were forced to pay a Fine for his redemption, your Declaration drawn must be delivered to the Defendants Attorney, as before in case, &c. And you must enter it with an Impar lance, if you give one.

And

And you are to give Rules, the Imparlance out, and call for answer, and make up your Issue, or for want of pleading, enter up Judgment by default, and take your Writ of Inquiry; in all things observing the Rules before given, either for tryall or proceeding with your Writ of Inquiry.

The generall Plea to this action is not guilty, but there are severall other Pleas, in Justification of a mans selfe, as where it is done in defence of a mans person or Goods; also a man may justifie in the defence of the person of his Wife, Father, Mother, or Master: But note that if it be not in these Cases, or in the Maintenance of Justice, if he be not constrained by a necessary cause, he is punishable if he beat another.

If a man come into another House against his will, and there offer violence either to his Wife, Children, Servants, or to any of his Goods, he may lawfully thrust him away, to hinder him, and if he bring an Action in such case, he may plead specially as the Case was, and conclude that to hinder him, or put him out of doors, he did (*Molliter manus imponere, &c.*) that is, softly lay his hands upon him.

To all such speciall pleas it is usuall they should be pleaded under Counsels hand.

Where a man for preservation of the peace, goeth about to part a Fray, by holding either of the parties from striking, in case the party that was so holden, doe bring an action of Battery, the Defendant may plead specially, that to preserve the person of one from killing, and preservation of the publick peace, he did come in aid to him, and did softly lay his hands upon him.

To this the Plaintiff may reply, that he did it of his owne proper injury, without any such cause, and then

the Defendant must maintain his Plea, with art (*ut prius dicit.*) And of this he puts himselfe upon the Country, &c. *Vi. Co. lib. 8. Cugates case 67* where *de injuria sua prop. sans tiel*, cause is good, where not.

There is a Plea called (*Son assault demesne*) which is where a man justifies in his own defence, as being first struck, which falls out to be very frequently pleaded. Thus much for Battery.

Of Trespasse in generall.

THese are the most generall Actions next Actions of Debt, that are brought, and vary in the originall Proteste and Declaration, according as the Trespasse is, and the cause of Action thereby accrued.

It may be brought for breaking the Close, without adding any manner of other Trespasse.

Sometime for breaking both Close and House, in which case the Originall is; Wherefore by Force and Armes, the Close of the Plaintiff at *L.* he brake and other harmes to him he did, to the great damage of the Plaintiff, and against the publick peace, &c.

You may lay it for severall Trespases at severall dayes, or one Trespasse with (*a Continuando*) that is, continuing of it for some certaine dayes or weeks; from the time laid in the Declaration.

It lyes for chasing of Cattell, whereby they either dyed, or were bitten or worried with Dogs.

It lyes for taking away of Pales, Posts, Railes, breaking of Hedges or Fences.

It lyes for digging in a Leaden Mine, and taking away the Ore, or for breaking the ground, and digging there.

Where a man breaks another mans Dove-Cote, and takes away Pigeons, an action lyes.

For drawing a Cart and Horses over any mans Ground, where there can be no way prescribed for, an action of Trespasse lyes.

It lyes for fishing in another mans Ponds, and for breaking the Pond, and letting out the water.

For chaling in a free Warren, an action lyes.

For breaking of a Close, mowing of Grasse, and eating of Corne with a mans Cattell, this action lyes.

For Trespasse done in a Garden, by plucking up by the Rootes, *Rosemary, Lavendar*, and other Herbes.

It lyes in the behalfe of a Minister against any that hinder or oppose him, in carrying away of his tithes.

It lyes for * impounding a Horse or other Cattell, and not giving them sustenance in the Pound.

** Note this must
be understood of
such Pounds as*

*where the party cannot come to give his Cattell meat, viz. a
close pound, Co. Lit. 47. b.*

It lyes for taking away Hay in cocks, and Corne in sheaves.

It lyes for taking of Horses or any other like Cattell, wherein you say (of the price of such, &c.) or if Goods and Chattels, then you say to the value of so much.

It lyes for breaking of the Doores, Windowes, Walls, or other forces of a house.

An action of Trespasse lyes, where one having right to a Toll in a Market, and imployes his Servant to gather it, and he is disturbed in it:

It lyes like wise where a man hath right to keep a Faire, and is hindred.

It lyes on the behalf of one that hath return of writs

within his Hundred, and hath a disturbance by any.

And where a man hath right to keep a Court Baron, and is any wayes disturbed, this Action lies.

For digging in a mans Cole mynes, and carrying away Coals, and for digging in a mans quarries, he shall have his Action.

WEE have now given you some particular hints, in what case an action of trespassse lies, I shall now proceed to the processe thereupon, which as I told you are by Originall, in the first place *Capias*, in case you can arrest them, or otherwise to the Outlawry.

If you arrest the party, and have an appearance you must draw your Declaration, wherein you must be sure to take perfect notice from your Client of the day when the Trespassse was done, that so you may lay it to be done before the *Teste* of your Originall, and likewise how long the trespassse continued, that so there be Occasion you may lay it with a *Continuando*, and whether there were not severall Trespasses at severall dayes, and the place where the Trespassse was done, in what Town or Parish, for from thence your *Venue* must rise.

To this action the most generall Plea is Not guilty, yet is there much speciall pleading by way of Justification or otherwise, but most usually that is after the common Barre hath been pleaded in an action of Trespassse, and that there be a new assignment of the place, then they plead as to the trespassse in the place, of new assignment, either in justification for a Foot-way, or a Cartway, or some other speciall Plea, &c. Or Not guilty to the new assignment: This new assignment is used very oft, to cleer a Title, which
upon

upon it comes in question ; here in case the Title appeare to be the Plaintiffs, he shall recover Damages.

This action brings to the party Plaintiff if he recover, Damages, but not recovery of any Possession, as in the case of an *Ejectione Firme*.

All manner of Proceedings after the Declaration any wayes had, relating to this Action, whether by tryall of *Nisi prius*, or Writ of Inquiry, upon default or confession, are altogether the same with what hath been delivered, as to actions of the case.

Actions of Covenant.

THIS action lyes where an agreement or Compact, is by Deed, Articles, or other Writings, sealed betweene two persons, where every of them is bound to the other, to performe certaine covenants for his part, and if the one of them holdeth not his Covenant but breaketh it, then he which findeth himselfe agreived, may have thereupon a Writ of Covenant : And Covenants are either in Law or Fact.

A Covenant in law is that which the Law intendeth to be done, although it be not expressed in words, as if a man demise any thing to another for a certain Term, the Law intendeth a Covenant of the part of the Lessor, that the Lessee shall hold all his Term against all lawfull Incumbrances.

But if afterwards in the deed there be a speciall Covenant to enjoy or the like, it is adjudgd in *Notes* case, that the expresse Covenant takes away the Covenant in law, but there have been opinions to the contrary since that case. *vi. Bol. 4.*

Covenant in fact, is that which is expressly agreed between the parties.

Also

Also there is a Covenant meerly personall, and a Covenant that is real, as sayes *Fitzherbert* in his *Natura Brevium*, Fol. 145.

Covenant real, is where a man tyeth himselfe to pass a thing real, as Lands or Tenements, where a man Covenants to levy a fine of Lands, &c.

Covenants meerly personall is where a man covenants with another by Deed, to build a house or to serve him.

Note well that no Writ of Covenant shall be maintainable without especialty, but in the City of *London*, or in some other place priviledged by custome or use.

Note that a man may bring an Action of Covenant upon a Letter of Attorney.

Where a Covenant personall is made to any and the Covenantee dies, the Covenant being unperformed, here his Executor shall maintaine an Action of Covenant.

The heire shall likewise maintaine an action of Covenant, where one had covenanted by writing with his Father, to Enseoff him in certain Lands, and doth it not.

The Processes incident to this action is an Originall which is a Summons, for in this action as in Debt, you say (was Summoned and not attached.)

Your Originall runs thus (Of a Plea that he hold the Plaintiffs Covenant betweene them made, according to the force, forme, and effect, of certaine Indentures betweene them made, &c.)

After your Originall taken out, you may have a *Capias*, and if you arrest him not upon the *Capias* you may proceed to the Outlawry, as in other cases.

Upon appearance had, you must declare as in the example following, wherein you must observe, that

in this action as in debt, you have (an *Alias diffus*) which must be made literally to agree with the Indenture.

Essex. II.

I Glover; late of, &c. otherwile called *Iohn Glover*, Gentleman, was summoned to answer *E. M.* of a plea, that he hold to him Covenant betweene them made according to the force, form, and effect, of certaine Indentures betweene them made, &c. And whereupon the said *E.* by *T. G.* his Attorney saith, That whereas by a certaine Indenture made (such a day, yeare, and place) betweene him and the said Plaintiff on the one part, and the said *J.* of the other part, which other part signed with the Seale of the same *I.* the aforesaid *E.* brings here into Court, the

* Date whereof is the same day and yeare : It is testyified (reciting the whole Indenture, till you come to in Witnessse whereof) as by the same Indenture more fully appeareth: And the said Plaintiff saith, That although he hath fulfilled and performed, all and singular the Covenants and Grants in the Indenture aforesaid above specified, on his part to be fulfilled and kept, in Fact the same *E.* saith, That within the aforesaid seven yeares, after the making of the Indenture aforesaid (that is to say) Such a day and year, one *T. D. Esq;* then being of the learned Counsel of him the said *E.* at *B.* aforesaid, in the County aforesaid, did devise and cause to be written for further assurance of the aforesaid Close with the Appurtenances to be made to the said *E.* a certain Writing of lease of the aforesaid Close with the Appurtenances, to be made to the said *E.* by the said *I.* in which said Writing it was contained, that the

aforesaid

* Note by the new rules only so much of the Indenture as is necessary shall be recited.

aforesaid *I.* should remise, release, and alwayes for himselfe and his Heires, quite claime to the said *E.* and his Heires, the whole Right, Title, and Claim which he had, or at any time from thence following might have, of and in the aforesaid Close with the Appurtenances: And the same *E.* afterwards, the same day and year at *C.* aforesaid, did request the aforesaid *I.* to seale, and as his Deed, to deliver to the said *E.* the aforesaid Writings of release in forme aforesaid devised, and the aforesaid *I.* that to doe, then and there altogether refused, against the form of the Indenture aforesaid; yet the said *I.* although often required, hath not held the Covenant aforesaid (for that, that he the said *I.* and his Heires, and all persons and their Heires, claiming in or by the aforesaid *I.* at any time, during the space of the aforesaid seven years, upon reasonable demand thereof, to them or any of them to be made, shall make, permit, and acknowledge, or cause to be made, permitted, and acknowledged, all and singular act and acts, thing or things for the better and further assurance and suremaking of the Premisses with the Appurtenances to the said *E.* and his Assignes, as by learned Councell of him the said *E.* his Heires or Assignes, should be reasonably devised, but hath broken it, and to hold that Covenant to him the said *E.* hath hitherto denyed, and yet doth deny, whereupon he saith that he is damaged, and hath damage to the value of two hundred pounds, and thereupon he brings his Suit, &c.

Here you have an action of Covenant brought for making further assurance; wherein you see the laying of the breach, and what the further assurance is, and indeed the whole difficulty of an Action of Covenant, lyes in the laying well the breach.

To this the Defendant pleads as followes.

And

And the aforesaid I. by F. N. his Attorney * comes and defends the force and injury when
 &c. and saith, that the aforesaid E. did not require him the said I. to seal, and as his Deed to deliver to the aforesaid E. the aforesaid writing of release, for further assurance of the aforesaid close with the appurtenances; to the aforesaid E. to be made, as the aforesaid E. by his Declaration aforesaid above hath supposed, and of this he puts himselfe upon the Country, and the aforesaid E. in like manner, therefore command is given to the Sheriffe, that he cause to come here on the Morrow after the holy Trinity, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. Because as well, &c.

** Note in an action of Covenant the Defendant must plead to every breach unless he will deny the deed.*

Observe by this issue you see joyned, that where the Defendant takes issue, you say, (and of this he puts himselfe upon the Country) and where the plaintiff takes the issue, you say, (and this he prayes may be inquired of by the Country.)

In this action you recover damages assessed by the Jury for what you are damnified, by the breach of Covenant and costs of suit.

Note that an Administrator may have an action of Covenant as well as an Executor, and the writ of Covenant ought to be brought in the County where the Deed is made; but if it be brought in another County, then where the Deed was made, the party Defendant shall not have a Plea in barre to the writ unlesse that the Deed beare date in another County.

A writ of covenant also lies against pledges, who become sureties that another man shall performe a Covenant.

The

The assignee of the Lessee shall maintaine an action of Covenant against the Lessor, although he be not specified in the said Deed of Covenant to be an Assignee.

See in *Spencer's Case* 5. Rep. where an assignee shall be bound, that is not named, and where not.

HAVING given you before, an issue joyned in an action of Covenant, you are (in case you proceed to triall) to make out your *Venire facias* as in others with this difference, only that you say, (of a Plea of Covenant broken) and then your *Habeas corpora* and the rest of your proceedings in order to triall, as before in other actions.

But if after your imparlance and rule being out, the Defendant plead not, you must take your Judgment by default, which is to be signed by the *Prothonotary*, and then you are to have your Writs of Inquiry which be awarded upon your Judgment roll, and signed by the *Prothonotary*.

There may be one or more Breaches assigned, as the case may require.

But in an action of Debt upon Bond for preformance of Covenants, he can assigne but one.

The reason is because every breach is a forfeiture of the bond.

NOW because within the title of that covenant reall, fall Writs of Covenant, it will not be amisse to insert here the forme of suing out a fine.

And

*And first, How to acknowledge a fine.
at the Barre in Court.*

IN the first place you are to take notice, that it is in the parties Election, whether they will acknowledge a Fine in open Court or before the Lord cheif Iustice of the common Pleas, at his Chamber or elsewhere out of the Court, as before some Judge of the same Court, or before the Iustices of Assize in the Countrey, when they goe a *Circuit*, or before Commissioners in the Countrey, by vertue of a * *Speciall Dedimus potestatem*, to give them authority to make the knowledge thereof, none of all those, saving * the Lord cheife Iustice having power to take without *Dedimus*, &c.

* The *Dedimus* is by the Statute of *Carlile*.

* This by the Lord cheif Iustice is by some.

If the acknowledgment be to be * court you must have your Writ of covenant made by the Cursitor, and there compounded it at the office of Alienation where it must be likewise Indorsed and entred, and so fitted for the Seal, to which must be annexed your *Præcipe*, and concord in Parchment, which you must deliver to some one of the * *Sergeants at barre* to draw it for you, and then you pay him three shillings four pence, and the other fees payable in court are certaine and are not great; for by the acknowledgment in court, the Client saves divers Fees and charges which otherwise the capti- on would cost.

made in open

* Note if the Lord cheif Iustice be in Court you must have your writ of covenant under seale, if he be not there, you may passe the fine at barre without it.

* If the *Sergeant* actually hath but 2 s.

The

The caption being past, you proceed with your *Præcipe*, and concord, and writ of covenant, through the Alienation Office, Kings Silver, *Custos Brevium*, and Chirographer, as hereafter is shewed in other acknowledgments. and warrant of Attorney remember together with *Janes* hand.

*How to acknowledge a fine before the
Lord cheife Justice.*

IF you would acknowledge your Fine before the Lord cheife Iustice of the common pleas, out of court, first draw your *Præcipe* and concord in a sheet of paper, and then bring the parties that must acknowledge the fine to my Lords chamber, and deliver your *Præcipe* to my Lords clarke of the Fines, who will read it to them in presence of my Lord, and their hands being first set to it, they acknowledge it before my Lord, and he putteth his hand to it.

The fee of my Lord cheife Iustice is, 11 s. 8 d. which being paid by you or your client to my Lords clarke, after the knowledgment, the clarke will afterwards ingrosse the *Præcipe* and concord in parchment, and get my Lords hand to that which you must fetch from him and give him his fee for the ingrossing thereof, which is. That done, you must carry it to the curllitor of the shire where the Land lies and leave it with him to make a Writ of covenant by, when the Writ is made, before you passe it under seale, you carry it to the Alienation Office, where you are to pay a fine for licence or leave to alien, and there it is you must make your composition, which is set by the commissioners sitting for that purpose, and that you may doe it with the lesse charge to your client, you must informe your selfe of the value of the land

land by year, and in case there have been a former fine, if you have it not to know the term when it was, and in case you inform the value, there is one sits purposely with the Commissioners to take it, who was formerly a Doctor, you must by entreaty, perswasion, or otherwise draw the fine to be set at as low a rate as possibly you may.

The value being set down by one of the Commissioners, if it exceed forty shillings, (for else there is nothing to be paid) you must go to the Receiver in the same Office, and pay the fine so assessed, which is the Kings-silver, for the Kings licence, which license the Clark of the Kings-silver entreth, as is hereafter shewed when the money is paid, the Receiver will set his hand, to the back of the Writ, then give it to the Doctor to sign, who hath four pence as I take it for his hand, then get the hands of the two Commissioners to the back of the Writ, which done, you must carry it to the Clarks there sitting to be endorsed and entered.

This being done you bring back your Writ to the Cursitor and he will get it sealed, and then you pay him the Fee of two shillings and six pence, then having broke it open you are to return it as followes.

Towards the upper end of the Writ thus,	}	<i>John Doe.</i> Pleadges of prosecuting <i>Richard Roe.</i>
--	---	--

Towards the middle of the Writ thus,	}	<i>John Dem.</i> <i>Richard Fem.</i>
---	---	---

And at the lower end of the Writ the Sheriffs
Name.

This is now by a late erected Office done by an^{*} Officer, who takes for the doing of it,

^{*} This office is and making an entry of it. 1 s. 6 d.
Erected by the Stat. of 23. Eliz.

Note, you are to file a warrant of Attorney with the Clark of the Warrants where your Writ of Covenant must be signed, which Warrant is as follows (the Shire in the margin) *W. G. puts in his place T. L. to prosecute a Writ of Covenant against T. H. of Lands and Tenements in A. and C.*

That done, file your writ of covenant and your Concord which you had from the Lords Clark together, and carry them to the *Custos Brevium* his Office in *Lincolnes Inne*, to the Clark who dealeth for that Shire. and leave them with him to enter in his Book, and to indorse the Writ. When he hath done, fetch them from him, and pay him for the same, 3 s. 8 d.

Then take them and carry them to the Kings-silver Office to enter the Kings-silver, which is the Fine for the value which you paid to the Receiver in the Alienation Office.

The forme of his entry you may see in the Rolls of the King-silver Office, amongst the Plea Rolls of any Terme in the Treasury at Westminster, his Fee is for entring of it 10 d. or other fees &c. which when he hath done, you must fetch it away and deliver it to the Secondary in the Chirographers Office, who takes it forth in his Book, and hath for his fee 5 s. 8 d. if it be in the Terme, but if it be not in the Terme, then you must give him six pence more, which he will have for allowing the Proclamation in the same Terme: That done, you must in the same Office deliver it to the Clark of the Office, who is appointed to write for that Shire wherein the Land lyes to ingrosse, he hath for the ingrossing of it 2 s. 6 d. if small, but if great, 3 s. 6 d. or more in case it be exemplified.

When

When your Fines are ingrossed, which are by way of Indentures, get one part from him, and deliver it your Client to keep.

In making up your Clients Bill, you alwaies take for your own Fee, as allowed for your paines, fix shillings eight pence.

How to acknowledge a Fine before a Judge out of Court, by Dedimus potestatem.

YOU shall proceede in taking the acknowledgement, and in passing the Writ of Covenant, thorow the Alienation Office, in like manner as is before shewed, which being done, and delivering your Writ back to the Cursitor, you must bespeake a *Dedimus potestatem*, which the Cursitor must make, and when you have your Writ of Covenant and *Dedimus potestatem* under seale, you must deliver the *Dedimus* to the Judges Clark of the Fines, and he will ingrosse the *Præcipe* and *Concord*, as before is shewed, and returne the *Dedimus*, and get the Judges hand to it; which *Dedimus* so returned, Concord and Writ of covenant you must annex together, and pass them through the *Custos Brevium*, Clark of the Warranty, Clark of the Kings silver, Mr. Jones his Office of Inrolments as tis termed, and the Chirographers Office in like manner as is before shewed: The course of Proceeding and Fees being all one, more then this, that you pay to the Cursitor for your *Dedimus potestatem*, 9 s. 4 d.

How

How to sue forth a Fine to be acknowledged before Commissioners in the Countrey, by especiall Dedimus potestatem.

WHere in regard of the Cognizors debility of Body or remotenesse from *London* or *Westminster*, or other occasion, you are to sue out a Fine, and passe it by speciall *Dedimus*, inabling Commissioners in the Countrey to take the acknowledgment; you are to proceed as followes.

First draw your *Præcipe* in a sheet of Paper, as a Note for the Cursitor to draw the *Dedimus* by, then ingrosse your *Præcipe* and *Concord* in a faire piece of Parchment, and goe therewith to the Cursitor of the Shire where your Land lyes, and upon your *Præcipe* in paper insert your Commissioners names, which must be foure in number, whereof one at least must be a Knight, and get him to make your *Dedimus potestatem* for which you must pay him 24 s. 2 d. and in paying of him (for he takes for them all) you pay a Fine, and for a Judges hand, and for the Master of the Rolls his hand, which hands must be had before it be sealed, and then having it under Seal, deliver it so, and the *Concord* before any two of the Commissioners named in the *Dedimus*, and your cognizors being present, let them take the *Caption* as is before shewed: Which being done they must return the Writ of *Dedimus*, and their Execution thereof in manner and forme following on the back of the writ.

The Execution of this writ appeares in a certain *Schedule* to the writ annexed.

And they must write the day of the *Caption* of the
Cog-

Cognizance, underneath the Concord as followes :
(taken and acknowledged at C. in the County of D. the
twelfth day of *August*, 1650.)

Underneath the which the Commissioners are to
Subscribe their names.

Having your *Dedimus potestatem* thus returned, you
must file your *Dedimus* and *Concord* together, and carry
them to the Curfitor for the making of your writ of
Covenant, which having had and compounded, if
your Proceed is as in all other Fines through the seve-
rall Offices.

NOte that upon every Fine past, where a Fine is
paid, there is within foure or five Termes a post
Fine, that comes in charge to the Sheriffe to levy in the
County where the Land lyeth; and that Fine is as
much and halfe as much, as was payed before in the
Alienation Office.

See for this the Exposition of the Statutes of Fines in
2 Inst. 510. 520.

*How to sue forth a license of Alienation of
Lands holden in Capite.*

IF you levy a Fine of Lands holden in *Capite* of
the Kings, you must be driven to sue forth your
license of Alienation, for if you should enter into
the Land without a license, the King would have
a Writ of Intrusion against you, and receive all the
meane Profits untill you have sued out a Pardon,
which is both troublesome and chargeable: The Fine
whereof besides the main Profits betweene the Intru-
sion and the Pardon, and the other charges, is above a
years value clearly, according to such composition
or *affidavit* of the undervalue as is said before of the
other Compositions of the Alienation Office, unless

the Commissioners inquire, will more favourably compound for the mean Profits, as in some cases upon reasonable cause shewed they use to doe.

And your license of Alienation is to be sued in this manner. First, You must get the Clark of the Alienations, to make you a *Dogget* in paper, which you must carry to the Alienation Office, and there compound for the value of the Land, which must be also by composition or *Affidavit*, as is shewed before.

The value being set downe underneath your *Dogget*, you must pay a third part of the value so assessed by way of Fine for your license, which you must likewise pay there in the same Office, and you must give the Receiver over and above what you pay, six pence.

Then you must there get the Doctors hand to your *Dogget*, for which you must give him, 2 s. and you must then get the Commissioners in the same Office, to set their hands to the *Dogget*, then deliver it to the Register, there to enter, for which you must give him 6 d. And after it is entred, then carry it to the Clark of the Alienation againe, and he will get the Lord Chancellor or Lord Keepers hand to it, and will afterwards ingrosse your license of Alienation, and passe it under the great Seal for you, The Charges are as followeth.

The Charge of acknowledging a Fine before the Lord cheif Justice; and a license of Alienation upon the same.

	1 s d
For drawing the Concord	0-3-4
For my Lord Cheife Justices Fee for acknowledgment.	0-9-8
To his Clark for ingrossing the Concord	0-1-6
For the Writ of covenant	0-2-6
For the return	0-2-9
	For

The Compleat Attorney.

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For the <i>Post diem</i> thereof	0-0-4
For the Fine	0-0-0
To the Receiver for marking the writ of Cove- nant.	0-0-6
For the Entry and indorment	0-1-6
For the Doctors hand	0-0-4
For the Warrant of Attorney and filing it.	0-0-8
To the <i>Custos brevium</i>	0-3-8
To the Clarke of the Kings silver	0-1-4
To the Chirographer	0-6-8
For ingrossing the Fine	0-3-0
For the Attorneys Fee	0-6-8

Charges of the Fine acknowledged at Barre.

s. d.

F OR drawing the <i>Præcipe</i> and Concord	3-4
For the writ of covenant.	2-6
For return of the same	2-0
For the filing thereof	10
For the Serjeant at armes	3-4
To the Prothonotary	6
To the Secondary	6
To the Cryer, Tipstaves, and Court keeper	1-6
For the Fine	
To the Receiver	6
For entry and indorment	1-6
For the Doctors hand.	4
For the warrant of Attorney and filing of it	8
To the <i>Custos brevium</i>	3-8
To the Clark of the Kings silver	1-4
To the Chirographer	6-8
For ingrossing the Indentures of the fine	3-0
For the fee	6-8

Charges of a Fine acknowledge by Dedimus potestatem, before a Judge and exemplified.

	<i>s. d.</i>
F OR drawing the <i>Præcipe</i> and concord.	3-4
To the Judge for his fee	9-8
To the Clark for the return of the <i>Dedimus</i> , and ingrossing the Concord	2-6
For the writ of <i>Dedimus potestatem</i>	9-2
For all other Fees, as in the next proceeding, for the severall Offices.	
For the exemplification	2-8
For the exemplifying	5-6
For the Seal thereof	2-2

Charges of a Fine by speciall Dedimus potestatem taken before Commissioners.

F OR drawing the <i>Præcipe</i> and concord	0-3-4
For the speciall <i>Dedimus potestatem</i>	1-4-0
For the Returne	0-3-0
For the rest of the Fees they differ very little from what are paid upon Fines otherwise acknowledged.	

HAVING spoken so largely of Fines, it now rests we should speake somewhat of Recoveries, that relate thereunto, for in many cases where a Fine is had, if there be Remainders over, it is very necessary for the Purchasers security to have a Recovery, to bar those in Remainder.

We shall therefore begin to shew you how to sue forth a Recovery, the Tenant and Voucher coming in person into court.

When you would sue forth a Recovery to be suffered by the parties in open court, you must doe thus :

Draw your *Pracipe* for your writ of entry, naming the Demandants and the Tenants, the quantity of Lands, and of what nature, how many Acres, what manors, *Messuages*, and in what place or places they lye or extend.

Then take your *Pracipe* and enter it upon the Bill of Pleas or Remembrance of the *Prothonotary*, in whose Office you enter and put the Voucher or Vouchers names in the margin of the Remembrance, if it be a single Voucher, then thus : The tenant calls *Houſe* to warranty.

If a double Voucher, the proper tenant calls *I. I. Esq.* who calls *I Houſe* (who is the common Voucher and the last Voucher in all Recoveries) if a treble Voucher, then you must name another person to be Vouched over.

Upon this Remembrance you must enter after your *Pracipe*, the Returne and *Teſte* of your writ of entry, and how it is returned, and the Sheriffs name, but this you make perfect before you examine your Recovery with the *Prothonotary*.

Those Remembrances are alwayes brought to the Hall in the Term time at the first sitting of the court, so that when you would draw your Recovery at Bar, your fittest time will be in a morning when the Judges first sit down, before they enter upon businesse.

Having your Clients in readinesse at the Bar, the Tenants and Vouchers, and the Remembrance in your hand, call them up between the Serjeants, and then deliver the Remembrance, and shew him your

Pracipe

Pracipe into one of the Serjeants hands, who will ask which is the Tenant, and cause him to stand up as also the Vouchers, to the intent that they may be shewed to the court, then the Judges will ask, who knows the parties, which you or some other must answer, you know them to be such parties, or else might others come either in men or womens names and suffer a Recovery of their Lands, to the losse of their Lands, as hath been heretofore seen; where the husband brought in another woman a stranger; saying, she was his wife, and suffered a Recovery of his wifes lands to cut off her estate without her consent.

After the Tenant or Tenants with the Vouchers, have their appearance recorded, then must you give for every Serjeant that speaks, (and one there is for each person personated, whether Demandants Tenant or Voucher or Vouchers) two shillings; which done, and the rest of the fees paid in court, which follow after amongst others.

Then get the Curstior to make your Writ of Entry by the *Pracipe*, and having your Writ of Entry unsealed, you must proceed therewith in the alienation Office, and other Offices, in all things as was shewed in a writ of Covenant, for the fees and the Fine are all one, only you must have the Attorney Generalls hand to the Back of your writ of Entry which you have not to the writ of Covenant, for which you pay ten shillings, formerly but eight shillings, and as for that you should enter into * that the land is not holden, but when they did enter bond, they did pay but six pence; and also where the Land is holden, and you sue forth license of alienation, you shall pay nothing.

* Note the writ of entry comes not at the King's bar.

Then take your writ and get it sealed, and then open

open it and return it, as you do your writ of Covenant.

Then deliver your writ to one of the Clerks of the Prothonotaries Office, who entred for you, and he will enter and exemplifie your Recovery for you, and make your writ of Seizin, and return that, and examine the Recovery with the Remembrance, writs of Entry and Seizin, and the Roll your Recovery is entred on with the Prothonotary, who must sign your Exemplification, which being carefully examined and signed, you must get sealed, and then deliver it to your Clyent: And you must be very carefull to see both your writ of Entry and seizin filed with the *Custor breviarum*, for that is the Warrantry for your proceedings had.

Note your writ of Seizin may be made returnable *Indilate*, or at a day certain, or of the Term following, all which your own further experience and practise will shew.

How to sue forth a recovery by Dedimus, Potestatem, and Warrant of Attorney.

IF either the Tenant or Vouchers cannot come into the court in person, you must passe it by warrant of Attorney, which warrant of Attorney may be taken by any of the Judges of either Bench, Barons of the Exchequers or Serjeants at Law in their circuits without *Dedimus potestatem*, or by commissioners in the country, where you must proceed as in the fine by *Dedimus potestatem*.

When you acknowledge your warrant before a Judge, you must draw up your warrant as before in parchment, and go with the parryes before a Judge and

and acknowledge them, and he will under-write the Day of the Caption, and subscribe his name, then get your writ of entry made and passed through the alienation office, which done, seal it, and deliver it to your Prothonotaries Clark, and he will enter it and will award the Writ of Summons, which will come in

* five Returnes after the *Teste* of the writ of Entry inclusive, and he will make a copy of the Declaration he entreth in parchment, which together with the writ of Summons, and the warrant of Attorney, he will examine with the Prothonotary by the writ of entry and the roll.

Then will he return a writ of Entry, and give it you fixt together with the writ of Summons, warrant of Attorney, and copy of the Declaration.

The writ of entry you must file, the writ of Summons you must Seale and keep them so fixt together safely till the writ of Summons be returnable; at which time you must bring the same into Court, and deliver it to one of the Serjeants who will call it at the Bar, as the manner is, and you must pay the Fees in Court, which done you must take it from the Serjeant and give it to the Prothonotary, who will mark it thus (*Ad Barram*) and give it you againe, which you must deliver to your Clark in the Prothonotaries Office, who will exemplifie and make your Recovery perfect and fitted for the Seal:

Note that although the Tenant be by warrant of Attorney, if either the Recovery be a single Voucher, or the Vouchers come in person, it needeth no Summons, and so may be a perfect Recovery of one Terme.

Note also, where you will take your warrant by
Dedimus

The Compleat Attorney.

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Dedimus potestatem before speciall * Commissioners, you must carry a Note of your *Præcipe*, and of your Commissioners names to the Cursitor, and get him to make your *Dedimus*, and proceed in that as is shewed you in case of a Fine, as to the Caption: and when your warrants are acknowledged, get them certified, and then by the help of your prothonotaries Clark, you may soon proceed to perfect your Recovery, either to Summons or *Alias* Summons, or so as your cause shall require.

* There must be a transcript of the warrant of Attorney, and a *Mittimus* unto the Common pleas, where 'tis taken by course in the Countrey.

It behoveth the Attorney to be very carefull of the true returning and filing of his writs, and the examining and filing of his Warrants, and other proceedings, for feare of committing error: and to that purpose by the Statute of 23. *Eliz.* it hath been used, especially in weighty matters, to exemplifie the Writs, Returnes, and warrant of attorney, for fear of being imbezled, whereby the Recoveries might be overthrown.

If you are to search for any Recovery of an old Terme, you must search in the Office of the Clark of the Warrants of Attorney, where you shall soonest find it of any place, by reason all the Prothonotaries bring in their Plea Rolls, on which the Recoveries are entred to the Clark of the Warrants to take them out into a book.

It hath been the constant practise formerly, in case the land were holden in *Capite*, to * sue forth a license of Alienation, as you do in the case of a Fine and that before your writ of Entry, for else you may

* See for these pardons. 2 *Inst.* 510.

be inforced to sue forth a pardon afterward, which was a very great mischief.

Charges of a Recovery with two Vouchers in person at the Bar.

F OR drawing your <i>Præcipe</i> ,	5-6
For taking it into the Remembrance,	2-6
For your Writ of Entry,	1-0
For the Fine of it,	2-6
To the Receiver,	
For the Doctors hand, entring, and indorsing,	1 6
For drawing it at Bar, and four Serjeants,	13-4
To the Cryers,	1-0
To the Box,	1-0
To the Warden of the Fleet,	0-6
For the common Vouchee	0-4
For the Attorney Generalls hand to the writ,	10-6
For making the Remembrance when the Recovery is drawn at the Bar,	2-0
For the Return of the writ of Entry,	2 0
For the <i>Post diem</i> of the writ of Entry,	0-4
For return of the writ of Seisin,	2-0
For the Prothonotary for the Entry of the recovery,	14-6
To the Clark for exemplifying of it, and making the writ of Seisin,	7-6
For sealing the Exemplification, and writ of Seisin,	2-9
For filing the writs of Entry and Seisin,	2-0
For the Fee of Demandant, Tenant, and Vouchee in the Recovery,	10-0
	<i>Charges</i>

Charges of a Recovery by Summons upon a Warrant of Attorney.

F OR drawing your Recovery, <i>Præcipe</i> , } and the Warrant of Attorney,	s. d. 3-4
For entry of the Summons,	6-6
For making the writ of Summons, and the Seal,	2-7
To the Clerk for drawing the Summons, and the entry in Parchment,	2-6
For filing every warrant of Attorney,	0-8
For return of the writ of Summons,	2-0
For the filling of it,	1-0

Note that every single Voucher hath three Serjeants, a double Voucher four Serjeants, and a trebble Voucher hath five Serjeants, and so further.

The <i>Prothonotary</i> hath as you see before for his entry for every Summons,	6-6
For every single Voucher,	10-6
For every double Voucher,	14-6
For a trebble Voucher,	18-6
For every <i>Dedimus</i> and <i>Mittimus</i> ,	4-0

The Charge of a Recovery under the Great Seal of England.

F OR the <i>Certiorare</i> ,	l. s. d. 0 13-4
For the allowance thereof,	1-09-6
	To

For the Exemplification for every Skin,
For the Seal,

1-06-8

1-00-6

*Come we now to the Action called
Ejectione Firme.*

* If your entry
be toll you must
bring the reall
action.

THis action is the most generall action now in * use, for tryall of a Title, and comes in place of many reall actions, which were both very tedious, difficult, and chargeable. This lyes where a man makes a Lease to another of Lands, Houses, &c. And seals and delivers it upon the Premises, and leaves the Lessee in possession, and afterwards the Lessee is outed by the Entry of a stranger; here in this case the Lessee shall bring his *Ejectione Firme*.

And in bringing this action, he must have recourse to his Lease, both for the thing demised, and the Term, and the date of the Demise, and the place precisely where the Land lyes, but those only are to be mentioned in the count but not in the Writ.

You must be sure your originall bear Telle, after the entry of the Ejector, and after.

In this action is recovered the possession of the land or House demised, and that by an execution of *Habere Facias possessionem*, which is awarded upon the Judgment Roll; and also damages.

The Processe in it are Originall *Capias alias*, &c.

The Originall runs thus.

THe Keepers of the Liberty, &c. Greeting, &c.
Wherefore by Force and armes two Messuages,
one Garden, eight acres of Land, two acres of
Meadow;

Meadow, and three Acres of Pasture, with the Appurtenances in *H.* which *R. G.* to the aforesaid *T. P.* did demise for a Term which is not yet past, did enter, and him the said *T. P.* from his Farm aforesaid he did eject, and other harms to him he did, to the great damage of him the said *T. P.* and against the publick peace, &c.

This is the forme of your Originall, and must be made by the Curfitor of the Shire, where the Land lyeth.

Note that although in your Lease you many times name severall closes, either of Land, Meadow, or Pasture, by their particular names, yet in your Writ, you must name the quantity of Acres of each, and how many houses, mills, &c. Note, an Ejectment wil not lye of a Cottage.

After your Originall is sued out, and a Nichill returned thereupon, you proceed to take out a *Capias*, and so arrest the Ejector, but if you cannot arrest upon the *Capias*, you may as in other actions proceed to the Outlawry.

But the party against whom you bring your Action, either appearing after arrest, or voluntarily, you must prepare your Declaration.

The Declaration goeth thus.

Bedford *β.* *R. G.* late of *H.* in the County aforesaid Yeoman, was attached to answer *T. P.* of a Plea, wherefore he with force and armes, two Messuages, one garden, eight acres of Land, two acres of Meadow, and three acres of Pasture with the Appurtenances in *H.* which *R. G.* to the aforesaid *T. P.* did demise for a Terme which is not yet past, did enter, and him the said *T. P.* from his Farme aforesaid did eject, and other harmes he did, to the great damage of him the said *T. P.* and against the publick peace, &c. And whereupon the said *T. P.* by *F. N.* his Attorney, com-
K plaines,

plains, that whereas the aforesaid R. C. (such a day and year, and place, naming the date of the demise) did demise to him the said T. P. the Tenements aforesaid with the appurtenances, to have and to hold to him and his Assignes, from (such a day then last past) unto the end and terme of three yeares then next following, and fully to be compleat and ended: By vertue of which Demise, the aforesaid T. P. into the Tenements aforesaid with the Appurtenances did enter, and was thereof possessed, and the said T. P. so being thereof possessed, the aforesaid R. C. afterwards, to wit (such a day and year aforesaid) by force and armes, &c. Into the Tenements aforesaid with the appurtenances, which the aforesaid R. C. to him the said T. P. in forme aforesaid did demise, for the Tearme aforesaid wick is not yet past, did enter, and him from his Farme aforesaid did eject, and other harmes, &c. to the great damage, &c. and against the Publick peace, &c. Whereupon he saith, that he is damnified and hath damage to the value of forty pounds, and thereupon he brings his Suit, &c.

To this the most generall plea is, not guilty, nor is there indeed any other plea in use, sometimes the Defendant confesseth the Action, and here you see following a Plea if not guilty, and a confession both to one action.

And the aforesaid R. by T. L. his Attorney, comes and defends the force and injury when, &c. And as to the whole trespassse and Ejectment aforesaid; above supposed to be done, besides the trespass and Ejectment in three acres of Land of the Tenements aforesaid with the appurtenances, he the said R. sayes that he is nowise thereof guilty as the aforesaid T. P. above against him complaineth, and of this he puts himselfe

himselfe upon the Country, and the aforesaid *T.P.* in like manner, and as to the Trespasse and Ejectment aforesaid, in the aforesaid three acres of Land of the Tenements aforesaid with the Appurtenances, above supposed to be made, he the said Attorney of the aforesaid *R.* saies, that he is not informed by the aforesaid *R.G.* his Client of any answer for him the said *R.G.* to the aforesaid *T.P.* in the complaint aforesaid to be given, and nothing else he thereupon saies, by which the said *T.P.* remaineth against him the said *G.* therein without defence, for which he the said *T.P.* his aforesaid Terme of, and in the aforesaid three Acres of Land with the Appurtenances, and his damages by reason of the Trespasse and Ejectment aforesaid; in the same three acres of Land ought to recover, but because it is convenient and necessary, that there be only one tax of the Damages, for the whole trespass and Ejectment aforesaid, if it shall happen that upon the determining of the Issue aforesaid judgment shall be rendred for the aforesaid *T. P.* Therefore the writ for giving of possession in that behalte is to cease, and also of enquiring of damages, by reason of the trespass and Ejectment aforesaid, in the same three acres of Land with the Appurtenances, untill the issue above joyned be determined, and as well to try that issue, as to enquire of Damages, &c. command is given to the Sheriff, that he cause to come here (such a day) twelve, &c. By whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Here you have an Issue j yned, which if you intend to try, you must proceed as is directed you in other actions. and so consequently for your Judgement after verdict.

In this action as I told you, there is possession recovered as well as damages, and for Execution in

both, which is for possession, your *Habere facias possessionem*, which is made, you most usually by the clerk at the Judgements after your costs are taxed, and the Judgement signed, and likewise a *Capias ad satisfaciendum* against the body for the damages; or a *Fieri facias* against the goods or Lands, which are also made by the Clarke of the Judgements, and may likewise be made by any of the Prothonotaries Clerks.

Having your VVrit of *Habere facias possessionem*, in case you cannot voluntary have quiet and peaceable possession, you must deliver your Writ to the Under-Sheriff, who will put you into possession, and remove whomsoever are in.

The fees incident to this action follow in a Table amongst others.

* *Replegiare is compounded of Re and Pleg. which is as much as to say, to deliver up or pledge. Co. Lit. 145 b.*

REplevin and Avowry comes in the next place to * be handled, as that which brings a Title many times in question by reason of the Avowry. Wherein we shall shew you the nature of the Action, and in what cases it lyes, and for what things, what is incident to it by way of proceeding.

And to give you the fuller knowledge of this action, we will begin to treat briefly of Distresses in general.

Distresse is a thing which is distrained in a house, or upon any Land for Rent behind, or other Duty or Services, or for hurt done, although the property of the thing belongeth unto a stranger: But if they be cattell that belong to a stranger, it is requisite that they were *levant and couchant upon the same ground; that

* *They are distainable for*

that is to say, That the Beasts have beene upon the ground a certaine space, and have well rested themselves there, or else they are not distrainable for rent or service.

rent, albeit they have not beene levant and couchant, but not for damage feasant.

And if a man distrain for Rent Services, or other thing, without a lawfull cause, then the party grieved shall have a Replevin, & upon * security found to pursue his action, shall have the distresse delivered to him again: But there be diverse things that be not distrainable, *Viz* another mans garment in the house

** See for this 2. Inst upon 2. Cap. of W. 2.*

of a Taylor, a strangers cloath, in

* the house of a Fuller, Shearman, or Weaver, for that they be common Artificers, and that the common presumption is, that such things belong not to the artificers

** Co. Lit. 47*

* in their own right, but to other persons which put them there to be wrought: The Lessor cannot distrain fairs fixt by the Lessee or a dying pan, although the Lessee may remove them during his Terme. 10 H 7 21.

** Co. Li. 47*

ff. Co. Lit 47

* The Lessor cannot distraine Glasse fixt by the Lessee for his Rent. 21 H. 7 26.

Co. Lit. 47

The Lord cannot distraine shocks of Corne for his Rent, but doing damage he may, Sheaves of Corne in a Cart may be distrained, victuall is not distrainable, 21 H. 7. 41.

A Distresse ought alwaies to be made of such things, whereof the Sheriff may make Replevin, and deliver again in as good case, as they were at the time of the taking.

A man may distrain for homage of his Tenant, for Fealty and Escuage, and other Services.

He may distraine also for Fines and Amerciaments, which he assessed in a Court Leet, But not in a Court Baron, unless by prescription.

He may likewise distraine for Damage Fesant, that is to say, When he findeth the Beasts or Goods of any other, doing him wrong by eating his grasse or corne, or trampling them downe, or for incumbring his ground.

Note, A man may not distraine for any Rent or thing due for any Land, but upon the same Land that is charged therewith.

But in case when a man comes to distrain, the other seeing his purpose, chaseth his beasts or cattell away * or beareth his goods out, to the intent they shall not be taken for a distresse upon the ground, in such case I may well pursue, and if I take it presently in the high way, or in another mans ground, the taking is lawfull as well there as upon the Land charged, to whomsoever the property of the goods be.

* *Alit. If the Lord had not view of the Cattell within his fee, albeit the Tenant drive them out on purpose, Co. Lit. 161.*

And for Fines and Amerciaments, which be assessed in a Leete, one may always take the goods of him that is so amerced, within whose ground soever they be within the Jurisdiction of the Court. *Avowry 162.*

Where one is amerced in a Leete, and another takes Leather from him, and makes thereof Bootes and Shooes, whereby there seemes to be an altering of the property, in this case, those Bootes and Shoes being within the precinct of the Leet may be distrained for the amerciament.

Note, When one hath taken a Distresse, it beho-
veth

veth to bring it to the Common Pound- or else he may keepe it in an open place; provided that he give notice to the party, who was owner of it, of his taking of it, and the place where it is, that he, if the Distresse be a quick Beast, he may give it Food; and then if the Beast or Beastes, dye for default of Food, he that was distrained, will receive the losse, for the party distraining may take another Distresse for the same Rent or duty. Note further, At the Common Law a man might have driven a Distresse whether he would, this is restrained by the Statute of *Marlebridge cap. 4.* and by Statute 2. *Phil. and Mar.*

But if he carry the Distresse to a Hold, or out of * the County, so that the Sheriff may not make deliverance upon the Replevin, then the party upon the Sheriffs returne of the Replevin may have a writ of *Withearnam* directed to the Sheriff, that he take as many of his Beasts, or as much goods of the other in his keeping, till he hath made Deliverance of the first Distresse; And also if the Beasts or Goods be conveyed to a Fort or Castle, the Sheriff may take with him the *Posse Comitatus*, that is, the power of the county to beat down the Castle, as appears by the Statute of *Westminster* first, Chapter the seventeenth.

* Note, If the Tenancy be in one County, and the Mannor in another, the Lord may drive the Distresse to the Mannor, 2 *Inst.* 186.

There is a Distresse finite and infinite.

Distresse finite is limited by Law, how often it shall be made to bring the party to a Tryall of the Action as once or twice.

Distresse infinite is within limitation untill the par-

ty come, as against a Jury that refuseth to appeare upon Certificate of Assize, the Processes are a *Venire facias*, *Habeas corpora*, and distresse infinite.

It is divided also into Grand Distresse, and an Ordinary Distresse.

A Grand * Distresse is that which is made of all the Goods and Chattells which the party hath within the County and seemeth sometimes to be all one with distresse infinite.

* *The Grand Distresse is the Distresse after appearance in lieu of a Petit Cape.*

If a man proffer sufficient amends before the Distresse made, for the wrong done by a mans cattell, or otherwise he cannot distrain and avow.

Note, That it is not lawfull for any common person to make distresses out of their Fee, nor in the Kings High way, nor in the common street, but the King might, and so might any that were substituted as his Ministers, and have speciall authority derived from him, *per Stat Maylb. cap 15*

But if the Lord distraine in the high way, the Tenant cannot avoid it in avowry, for then the King should loose his fine, but the Tenant shall have an action, therefore upon the Statute of *Marlebridge, cap. 15. vi. 2 Inst. 131.* and the statute is not intended of distresse for Rent charge or by reason of a Leet.

Thus much for Distresses in generall, we come now to the replevying of the distresse taken.

Replevins are of two sorts, by the Common Law, and that is by writ, by

statute, and that is by plaint. *Co. Lit. 145. b.*

* **T**His Replevin (as we touched before in Distresse) is a Writ that lyeth where any man distraineth another for Rent or other thing,

then

then the party distrained shall have this Writ to the Sheriff to deliver to him the distresse, and shall finde Surety (as we said before) to pursue this Action, and if he pursue it not, or if it be found or adjudged against him, then he that tooke the Distresse shall have again the distresse, and that is called the Returne of the Beasts, or other things, and he shall have in such cases, a Writ that is called a *Returno Habendo*.

Also if it be in any Franchise or Bailiwick, the party shall have a Replevin of the Sheriff, directed to the Bailiff of the same Franchise, for to deliver them againe, and he shall finde Surety to pursue his Action at the next County Court, and this Replevin may be removed out of the Country unto the Common pleas, by a Writ of *Recordare*.

Note, That a man may have a Writ of *Homine replegiando*, which lyes where a man is in prison, and not by the especiall commandement of the King, nor of his Justices, nor for the death of a man, nor for the Kings Forrest, nor for such cause that is not repleviabie, then he shall have this Writ directed to the Sheriff, that he cause him to be replevied

See for this more particularly, F. N. B. 66.

This Writ is a Justices, and not returnable, and if the Sheriff do it not, then there shall goout another Writ (*Sicut alias*) and afterwards another Writ, (*Sicut plures vel causam nobis significet*) which shall be returnable, and if the Sheriff yet make no Replevin, then there shall go forth an Attachment against the Sheriff directed to the Coroners to attach the Sheriff, and to bring him before the Justices at a certain day, and furthermore that they make Execution of the first Writ.

If a man rake living cattell, and more then one Beast, then the Writ of Replevin runs thus,

The Writ of Replevin.

THE Keepers, &c. We command thee, that justly and without delay, thou causest to be replevied unto B. his Cattell which C. tooke, and unjustly detaines, as it is said, and afterwards to him then thereupon, justly cause to be brought back, least that we any more hereupon, hear a complaint for want of Justice, &c.

If it be but one single beast that is taken, then the Writ shall be,

The Keepers, &c. We command thee, &c. that thou causest to be replevied unto B. his Horse, Heyfer, or Bull, &c.

If it be of any dead Chattell, the Writ shall go thus.

The Keepers, &c. We command thee, &c. that thou causest to be replevied unto B. his Goods and Chattells.

In his Declaration it behooveth him, to declare of diverse things naming them.

But if he take but one thing that is a dead Chattell then the writ shall be thus.

The Keepers, &c. We command thee, &c. that thou causest to be replevied unto B. a certaine Net, or a certaine iron of his Mill, &c.

NOte that if the Sheriff returne upon the Replevin, the *Alias* or *Plures*, (where the Replevy is to be made within the Liberty or Franchise) that he hath commanded the Bailiff of the Franchise, who hath given him no answer, or that the Bayliff will not make Deliverance, that then the Plaintiff shall have

a *Non*

a *Non omittas*, to the Sheriff, commanding him to enter into the Franchise, and make the Return, and if the Sheriff do it not, the plaintiff shall have an *Alias non omittas*, directed unto the Sheriff, and afterwards a *Plures non omittas*, &c.

But this Return, that he command the Bailiff of the Liberty, &c. Who gave me no answer, &c. or the other Returne, that the Bailiff will make no deliverance, are no good Returnes, for by the Statute of *Marlebridge cap. 21. Vi. 1. cap 17.* in the end of the same Statute appears, that the Sheriff upon such a Returne made to him by the Bayliff, ought presently to enter into the Franchise or Liberty, and make Deliverance of the thing taken, 2 *Inst.* 193.

At the Common Law in such case the Sherif would not enter into the Liberty, *F.N.B.* 58.

By the Statute of *Marlebridge Cap. 21.* The Sheriff may either by parocell or precept command his Bailiff to deliver them, and may hold plea, and albeit he be not worth twenty pounds, 2 *Inst.* 139.

By the custome of the Countrey of *Northampton*, in the absence of the Sheriff, the Frank pledge may make Deliverance.

And if the Sheriff upon the *Plures*, Returne, that the aforesayd *B.* the Cattell of the aforesayd *A.* hath taken, and them hath driven out of the Countrey into the Countrey of *F.* by which he cannot replevy them unto him, or if the Sheriff returne that he hath Commanded the Bailiff of the Franchise of *D.* who hath Returne of Writs, &c. Who hath answered him, that the cattell are Essoyned into diverse Liberties that he cannot have the view of them whereby to make deliverance.

And if the Sheriff make Returne, that he cannot have view of the Cattell, whereby to make Deliverance,

rance, or if the Sheriff returne, that after the taking of them, &c. The Defendant hath effoynd his Beasts out of his Bailiwick, by which he cannot make deliverance, or if the Sheriff returne that the Defendant hath effoynd his beasts into places unknowne, by which he cannot come to have a view of the Beasts, whereby to make Deliverance, or if the Sheriff returne that he hath commanded the Bayliffe of the Franchise, &c. Who hath answered him, that the Defendant hath impounded the Beastes within the Rectory of the Church of C. by which he cannot make Deliverance upon those Returns made by the Sheriff, the Plaintiff may have a Writ of *withernam* to take as many of the Beasts of the Defendant; and it shall be directed to the Sheriff, and the Writ shall be thus.

The writ of Withernam.

THe Keepers, &c. Whereas we have many times commanded thee justly, &c. To A. his cattell which B. took, &c. and detaineth as it is said, thou shouldest replevy, or signifie the cause to us, wherefore our commandement to thee many times thereupon directed, thou couldest not, nor wouldest not execute. And thou hast signified unto us that after the aforesaid B. tooke the Cattell of the aforesaid A. he drove them into your County, and from that County into the County of C. by which you could not replevy them to him the said A. we willing to stop the malice of him the said B. in that behalfe, command thee, that the Cattell of the aforesaid B. within thy Bailiwick, thou take without delay in *withernam*, and them thou detain, untill according to the Custome of our Realme of England, thou canst replevy the aforesaid A. his cattell according to the Tendor of our aforesayd command to thee formerly directed, &c.

Note, In this Writ of *withernam*, that whatsoever the

the Sheriff returne upon the *Piures*, it ought to be inferred and rehearsed in the writ, of *Witernam*, as is before specified, and if the Sheriff return upon the *Piures*, that he hath commanded the Bayliff of the Franchise, &c. who answereth him, that the Cattell are elloyned, &c. then the plaintiff shall have a writ of *Witernam*, directed to the Sheriff, and the Sheriff shall command the bayliff of the Franchise to serve the *Witernam*, and if the bayliff do not, Execution, or give not any answer to the Sheriff of the precept directed to him; then the plaintiff shall have a *Witernam* directed to the Sheriff, with a (*Non omittas propter aliquem Libertatem, &c. Qui eam ingrediaris, &c.*) and shall take in *Witernam*, &c.

Note that the Sheriff upon complaint made to him of the taking of Cattell, may command his bayliff by word of mouth to make replevin, and this aswell as if the Sheriff had made a precept to his bayliff to make a replevin, for it may so fall out the Sheriff nor his Bayliff may not be able to write, or may want pen, ink, or paper *Marlb. vi. Inst. 139.*

If a man take cattle damage feasant, that is, doing hurt, and offer sufficient amends before the cattle be unpounded, and the party refuseth it, &c. Now if he sue a Replevin of the cattle, he shall recover damages only for the detayning of them but not for the taking of them, for that was warrantable. *Co. Lib. 8. 147. 2. Inst. 107.* If the Lord or Bayliff run to distrain the beast of his tenant for his rent behind, before he distresse the tenant may upon the laid lands levy the arreares, & if after that a distresse be taken it is wrongfull, and if the Lord have distrayned, if the tenant before the impounding of them levy the arreares, the

the Lord ought to deliver the distress, and if he doth not the detainer is unlawfull.

So in the case of a distress for damage feasant the tender of amends before the distress, makes the distress unlawfull, and after the distress, and before the impounding the Detainer unlawfull.

But if a man bring an action of trespassse for taking away his beasts, there tender of sufficient amends was no barr before the action brought, untill the statute of 21. Jac^o.

And if the Lord take the beasts of his tenant wrongfully, and after the beasts returne unto the tenant, yet the tenant shall have a Replevin against the Lord for those beasts, and shall recover his damages for the wrongfull taking of them.

And if a man distraine in one county, and drive the cattell into an other county, the party whose cattell they were may sue a replevin in either of the counties, which he please, or in both.

And if the cattell of a Feme sole, that is, a woman unmarried be taken, and afterwards she take a husband, The husband solely may sue a Replevin.

Note in Replevin, if the plaintiff declare that the defendant now hath and detaineth the cattell, &c. and the defendant appeares, and after makes default, the Plaintiff shall have judgment to recover all in damages, as well the value of the cattell, as damage for the taking of them, and his costs.

IN this action of replevin the proccesse are; summons, attachment and distress, and upon a *Nichel*, proccesse of utlawry, and then the Originall must come forth of the Chancery, except the sheriff who may make a replevin, *Ex officio*, which shall be tryed in the sheriffs court, called the county court) do make it which

which is most usuall; and then it may be removed forth of the Sheriffs Court by a (*Recordare*) or forth of any Lords Court or Hundred Court, by an (*Accedas ad Curiam*) upon either of which Writs returnable, either into the Upper Bench or Common Bench if the Plaintiff declare not against the Avowant for taking his Goods or Chattells which were taken before, the Avowant is to sue out a Writ of *Retorno Habendo*, to be made by the Philizer of the County.

And if the Sheriff upon the *Retorno Habendo*, do returne that the Cattell were effoyned &c. then a *Capias* in *withernam* as was before said, shall be awarded to take other Cattell, and if the Sheriff returne that he hath no Cattell, then a *Capias* against the Body, and those Processees are likewise made by the Philizer of the County, &c. And the like processe may be had in a Court Baron, in Replevin there.

Having shewed you the nature of this Action, and how and in what cases it lyes, and the processees that are incident to it, we come now to the Declaration upon it.

Devon ff.

IN. was summoned to answer *VV. D.* of a Plea; wherefore he tooke the Cattell of him the sayd *VV.* and them unjustly detained against Sureties and Pledges, &c. And whereupon the same *VV.* by *J. D.* his Attorney, complaines, that the foresaid *J. N.* (such a Day and Yeare) at *R.* in a certaine place, there called *E.* hee tooke the Cattell, that is to say, five Heyfers, and two Bullocks, of him the said *W.* and them unjustly detained

rained against Sureties and Pledges, untill, &c. Whereupon he saith that he is damnified, and hath damage to the value of twenty pounds, and thereupon he brings his Suit, &c.

The Aduowry for Damage feasant.

AN D the aforesaid J. by R. F. his Attorney, comes and defends the Force and Injury when, &c. And as the Bailiff of J. E. well acknowledgeth the taking of the sayd Cattell, in the aforesayd place, in which, &c. And justly, &c. because he saith, That the same place in which the taking of the Cattell aforesayd supposed to be done, containeth, and the aforesayd time of the taking aforesayd, above supposed to be done, did containe in it sixteene Acres of Land with the Appurtenances in R. aforesayd, which sayd sixteene Acres of Land with the Appurtenances are, and the aforesaid time of taking aforesayd, above supposed to be done, were the sole and free Tenement of the said J. E. And because the Cattell aforesaid, the aforesaid time wherein, &c. Were in the aforesaid place, in which, &c. Feeding upon the Grasse growing therein, and doing Damage there, the same J. as the Bayliff of the aforesayd J. E. Well acknowledgeth the taking of the aforesayd Cattell, in the aforesayd place in which, &c. and justly, &c. doing there Damage, &c.

*A Plea in Barre to the Avowry by a Guardian
Socage.*

TND the aforesaid *W.* saith, that the aforesaid *I.* for the reason before alledged, ought not to acknowledge the taking of the aforesaid Cartell, in the aforesaid place in which, &c. as the Bailiff of the aforesaid *I. E.* to be just, because he saith, That before the aforesaid time of the taking aforesaid, and long before the aforesaid *I. E.* had any thing in the aforesaid sixteen acres of Land with the Appurtenances, one *R. E.* was seized of the Mannor of *H.* with the Appurtenances, in the County aforesaid, whereof the aforesaid place in which, &c. is, and the aforesaid time of taking aforesaid, was parcell in his Demesne as of Fee, and being so thereof seized, the Mannor with the Appurtenances whereof, &c. he held of one *R. W.* Knight, as of his Mannor of *L.* in the County aforesaid, in Socage, that is to say, by Fealty and the Rent of twenty pound by year, every year, at the Feast of Saint *Michael* the Arch-Angell yearly to be paid, as also by the Service of doing Suit to the Court of the said *R.* of his aforesaid Mannor of *L.* from three weeks to three weeks, at the aforesaid Mannor yearly to be held; and the same *R. E.* of the Mannor of *H.* aforesaid; with the Appurtenances whereof, &c. being so seized, died thereof seized, after whose Death the said Mannor with the Appurtenances thereof, &c. descended to the aforesaid *I. E.* as to the Daughter and Heire of him the said *R. E.* the same *I. E.* being then within the age of fourteen yeares, that is to say, at the age of twelve years, and the said *W.* is the next of kindred to the said *I. E.* that is to say, the Brother of *Eleanor*, the wife of the aforesaid *R. E.* and Mother

of the aforesaid *I. E.* to whom the aforesaid Mannor of *H.* with the Appurtenances whereof, &c. cannot from the aforesaid *I. E.* by hereditary right descend, by which the custody of the aforesaid Mannor of *H.* with the Appurtenances whereof, &c. and of the aforesaid *I. E.* untill the lawfull age of fourteen years, of her the said *I. E.* pertaines, by which the said *W.* the aforesaid time of taking aforesaid, was of the custody of the said Mannor of *H.* with the Appurtenances whereof, &c. and of the aforesaid *I. E.* possessed, for that at the same time in which, &c. the said *I. E.* was within the age of fourteen years: and being so thereof possessed, afterwards, and before the aforesaid time of taking aforesaid, he put his aforesaid Cattell, in the aforesaid place in which, &c. to feed on the grasse then thereupon growing: Which said Cattell were in the aforesaid place in which, &c. feeding upon the grasse then growing, untill the aforesaid *I.* the day and yeare in the Declaration above specified, at *R.* aforesaid, took the aforesaid Cattell of him the said *W.* and them unjustly detained, against Sureties and Pledges untill, &c. as the said *W.* against him complaines; and and this he is ready to aver, whereupon for that the aforesaid *I.* above acknowledgeth the taking of the aforesaid cattell, in the aforesaid place in which, &c. The said *W.* prayes Judgment and his Damages, by reason of the taking and unjust detaining of the aforesaid Cattell, to be adjudged unto him, &c.

The Defendant maintains his Plea, and traverses the tenure in Socage.

AND the aforesaid *I. N.* as formerly saith, that the aforesaid sixteen acres of Land with the Appurtenances, are, and at the aforesaid time of taking aforesaid

aforesaid, above supposed to be done, were the sole and free Tenement of the aforesaid *I. E.* as he before hath alledged, without that, that the aforesaid *R. E.* held the aforesaid Mannor of *H.* with the appurtenances whereof, &c. of the aforesaid *R. W.* Knight, as of his Mannor of *L.* in Socage; that is to say, by fealty; and the Rent of twenty pence by the year, every year, at the Feast of Saint *Michael* the Arch-Angell yearly to be paid, and by the Service of doing suit at the Court of the aforesaid *R. W.* of his aforesaid Mannor of *L.* from three weeks to three weeks, at the Mannor aforesaid yearly to be held as the aforesaid *W.* hath above alleadged, and this he is ready to aver, whereupon he prays Judgment, and the return of his cattell, together with his damages to him the said *I. N.* to be adjudged, &c.

Issue upon the Traverse.

AND the aforesaid *W.* as formerly saith, that the aforesaid *R. E.* held the aforesaid Mannor of *H.* with the Appurtenances whereof, &c. of the aforesaid *R. W.* as of his Mannor of *L.* in Socage, that is to say by fealty, and the rent of twenty pence by year, each year at the Feast of Saint *Michael* the Arch-Angel, yearly to be paid, as also by the service of doing suit at the Court of the aforesaid *R. W.* of his aforesaid Mannor of *L.* from three weeks to three weeks, at the said Mannor yearly to be held, as he hath before alleadged, and this he prays may be inquired of by the country, and the aforesaid *I. N.* in like manner, therefore command is given to the Sheriff, that he cause to come here twelve, &c. By whom &c. And who neither, &c. To recognize, &c. Because as well, &c.

Here you have both a Declaration, an Avowry, a

bar to the Avowry, a Re-joynder, and Sur-rejoinder, whereby you have a full and a compleet issue made up.

And here note, that this avowry is for damage feasant, but there are severall other avowries, as ;

First , a man may avow for services due to his Mannor , as suit to his Court , or suit at the Mill , &c.

Or for a Rent-charge upon prescription to distrain.

Or for a rent Charge generally , he may avow.

A man may avow for an amerciament in a Court Baron.

After issue joyned , in case you would proceed to a Triall, your proceeds are for the making your *Venire*, and suing out your Record, and *Habeas corpus*, as in other actions.

Partition.

Co. Lit. 163. **T**His action lyes in severall cases, as where Lands discend by the course of the Common-Law, or by custome, as Gavelkind Land amongst Coheries or Copartners where there must be two at the least, whether they be Sons, Daughters, Sisters, Aunts, or otherwise of kin to the ancestor from whom the Land descended to them.

And this partition is made four wayes for the most part , whereof
Vide Avowry three are at pleasure , and by agree-
Co. Lit. 180. ment amongst themselves , the other
is by compulsion, when any refuse.

One partition is, where they themselves divide the Land equally by agreement,
Co. Lit. 105. b.

greement, into so many parts as there be of them copartners and each chooseth one share or part, the eldest first, and so the one after the other, as they be of age, except the eldest by consent made the partition, then the choise belongeth to the next, and so to the eldest last, according to the old Rule, he that divides, must not choose.

Co. Lit. 166.

b.

An other partition is, when they choose certaine of their friends to make division for them :

C. Lit. 166. a

The third partition by agreement, is by drawing of lots thus : 1. To divide the land into so many parts as there be Copartners, then to write every part severally in a little Scrol or piece of Paper, or Parchment, and put the same Scrole up close into a hat or cap, or other such like thing, and then each Partener, one after the other as they be of age to draw out thereof one peece or Scrowle, whereon is writren a part of the land which by this drawing, is now severally allotted unto them in Fee simple.

C. Lit. 166. b

The fourth partition, which as we said, is by compulsion, coms now to be treated, of, which is, where sone or some of the Coparteners would have partition, and other some will not agree thereunto, then they that so would have Partition, may bring a writ, *De Partitione facienda*, against the others that would not make partition, by vertue Whereof they shall be compelled to part, &c. Tenant per curtesy may be compelled, but cannot compel to make partition by common law. *alij. per stat. Co. Lit. 175.*

C. Lit. 167. a

Copartners & estranger purchase the part of one of them, he and one other copartener cannot joine in a Writ of Partition, neither per Common law nor by

the statute, but severally they may. *Co. Lit.* 175.

In Rent where the lands are of nature of Gavel-kind, they call at this day their partition, shifting, which is the same with that the Saxons used, namely; *Shaston*, which signifies to make between Coheires partition, and to assigne to each of them their portion, in latine it is called *Horriscere*.

Partition may also be made by joint tenants, or Tenants in common by their assent by deed between them or by Writ, by the statute of 3 Henry 8. *chapter* 32. and by the statute of 31. Henry the eight. *C.* 10. by custome of some burrough tenants in common, and joint-tenants may make partition by compulsion per custome. *Co. Lit.* 187.

The proces in this Action is Summons, Attachment and distresse infinite.

Your summons is as Follow.

The Summons in partition,

THe Keepers, &c. If A. &c. then summon B. to shew wherefore when they the said A. and B. together & undivided, hold three acres of the land with the appurtenances of the inheritance which was of M mother of the aforesaid A. and B whose heirs they are in I. the same B. to make partition thereof between them, according to the Law and Custome of the Commonwealth of England, denieth, and the same permitteth not to be don, most unjustly as she saith, and have you here this writ, &c.

Note that the Summons varies in the case where there are three or four Coparteners, and likewise where it is between joint-tenants, or tenants in common, the summons according to their severall cases, were too large here to inferr.

Having your summons thus made retornable of any

any Terme the Defendant may Eſſoine if he will.

If the Defendant do Eſſoine, it reſts on the Plaintiffs part to adjorne it, as if the Summons, *Tres Michaelis*: he may adjorne to *Craſtino Martini*, and then iſſues out from the Philizor, a Writ called a *Pone*, returnable, *Oſtavis Hillarii*, and then upon that returned by the ſheriff, you muſt file your *Pone* with the Philizor, which warrants the making out of a *Diſtringas*, returnable, *Oſtavis Purificationis*, and upon that get an Amerciament of five pounds, if the Defendant appeare not, then you may have an *Alias Diſtringas* returnable in *Eaſter Term*, doubling your iſſues, and ſo to diſtreſſe infinite till he do appear.

Where the defendant as before doth caſt an eſſoyn, and there is no adjournement made thereof, the defendant may enter a *Non ſuite* againſt the Plaintiff if he be carefull firſt to enter a *Ne recipiatur* with the Clark of the Eſſoines, upon the day of the exception, upon which *Non-Suite*, the plaintiff muſt begin again.

Where there are ſeverall defendants they may ſeverally Eſſoine, if they would protract time before appearance, and where they Eſſoine not upon the Summons, they may upon the *Pone*,

If they do not Eſſoin, but appeare, you may declare, and your declaration,

Buck ſſ.

Anthony Cook Knight, in mercy for many defaults;
* and the ſame Anthony, and Tho.

Wootton Eſq; were ſummoned to answer *This is where*
Peter Temple Gentleman of a Plea, that *the defendant*
whereas the ſaid Peter and the aforeſaid *appeares after*
Anthony and Thomas together and un-*doſtrain.*
divided, do hold to them and their heires
the mannor of *Doſet alias Dorſet*, with the appurtenan-

appurtenances, they the said *Anthony* and *Thomas* to make partition thereof between them, according to the form of the Statute in that case published and provided, do deny, and the same most unjustly permit not to be done, against the form of the Statute aforesaid, &c. And whereupon the same *Peter* by *T. L.* his Attorney sayes, That whereas he and the aforesaid *A.* and *T.* together and undivided, do hold to them and their Heirs, the Mannor aforesaid with the Appurtenances whereof unto him the said *Peter* and his Heirs it belongs: to have one part of the Mannor aforesaid with the Appurtenances, in three parts equally to be divided, and to the aforesaid *Anthony* and his Heirs, it pertaines to have another part of the same Mannor with the Appurtenances in three equall parts, as is aforesaid to be divided and unto the aforesaid *Thomas* and his Heirs, it pertains to have a third part, the residue thereof to hold to them in severalty, so that the same *Peter* of his part of the Mannor aforesaid, with the Appurtenances to him belonging, and the aforesaid *Anthony* of his part of the Mannor aforesaid, with the appurtenances to him thereof belonging, and the aforesaid *Thomas* of his part of the Mannor aforesaid with the Appurtenances, to him thereof belonging; may be able severally to approve: They the said *Anthony* and *Thomas* to make partition thereof between them, according to the form of the Statute in that case made and provided; do deny, and the same most unjustly permit not to be done, against the forme of the Statute aforesaid; whereupon he saith that he is damnified, and hath damage to the value of a hundred pounds, and thereupon he brings his suit, &c.

In these Actions the Pleas are various, as the title may be.

The Defendant may plead the Freehold solely in himself at the time of the Plaintiffs issuing forth his originall Writ, and traverse that they hold it together and undivided, &c. whereupon he prayes Judgement, whether partition ought to be made between them, &c.

To this Plea the Plaintiff may take the issue upon the traverse, and if so they may joine Issue, and so proceed to tryall.

Upon a Verdict and Judgement had for the Plaintiff, he may have his Writ of partition directed to the Sheriff, commanding him to take twelve men of the county, and of the *Venue*, in the presence of the Co-partners to make partition; by vertue of which Writ he summons a Jury of the said twelve men, and in the presence of the parties concerned, he makes partition, and then his return is as follows.

By vertue of this Writ of the Keepers of the Liberty of *England* to me directed, and to this partition indented, annexed I, T. D. Knight, Sheriff of the County aforesaid (such a day, year, and place) having taken with me L. N. R. F. and twelvy free and legall men of my County, and of the *Venue* within written, in presence of H. L. R. M. in the Writ aforesaid named, in my proper person, I came to the Tenements in the said Writ named, and there by their oath (having respect to the true value of the same Tenements with the Appurtenances.) The same Tenements into partition into three parts equally to be parted, I have caused, and one part of the same three parts (*Videlicet*) (such and such Land so butted and bounded) I the Sheriff aforesaid, the aforesaid day and yeare, &c. Those to be delivered and assigned, have caused to H. L. in the said Writ named to be had to her, in severalty, according to the form and effect of the Writ aforesaid, and as to two parts of the residue of
the

the aforesaid Tenements in the aforesaid Writ specified, I the Sheriff aforesaid certifie the Justices within written, that none of the part of the other two came to receive of me, the aforesaid Sheriff, the same two parts, so that the same two parts to the other two assigne and deliver I could not, as the Writ aforesaid exacteth and requireth, in Testimony whereof, as well the Scale of me the aforesaid Sheriff, as the Seals of the aforesaid twelve Jurors to this partition indented, or set, given the day and year abovesaid: Upon this returne of the Sheriff, the Judgement is entred, that the partition aforesaid made, in form aforesaid shall be held firm and stable for ever, &c.

A partition thus made by the Sheriff, and by the Oath of twelve men, and Judgement thereupon given, shall bind an Infant, though his part be unequal, *Co. Lit. 171. b.*

Note a partition between joynt-tenants, is not good without Deed, albeit it be of Lands; and that they be compellable to make partition, by the Statute of 32. Henry the eighth, Chapter the tenth, and 32. Henry the eighth, Chapter 32. because they must pursue that act by Writ, *De partitione faciend.*

And note that you are to take out this Writ, *De partitione faciend.* Executed by the Sheriff, together with the Sheriffs return *Verbatim*, into the remembrance in the Prothonotaries office, and then the Prothonotary signs judgement thereupon.

The Fees incident to this Action you will find in the generall Table of Fees:

We proceed now to treat of Dower.

Dower in the common Law is taken for that portion, &c. which the Widow hath for term of her life,

life, of the Lands or Tenements of her
Co. Lit. 31. husbands, it is called *Dower* or *Dowery*, as
 a gift; because the Law it selfe doth
 (without any gift of the husband himself) give it to
 her, it's commonly taken for the third part, which she
 hath of her husbands Lands after his decease, *Co. Lit.*
32. a.

To the consummation of this *Dower*, three things
 are necessary, Marriage, Seisin, and the death of the
 husband.

This provision the Law hath made for a Widow,
 where the husband hath not assigned in his life time,
 part of his Lands to his Wife. By Gavelkind she is to
 have halfe, *dum sola & cast.* but she cannot waive it,
 and take her thirds *q. com. tollit Communem Legem.*
Co. Lit. 33. b.

Dower by the custome of some places, as (Gavel-
 kind Land, &c.) is to have halfe the Husbands Lands.
Co. Lit. 30. b.

This Writ of *Dower*, lyes where a man is sole sei-
 sed of Lands or Tenements in Fee-simple or Fee-tail;
 during the Coverture between him and his Wife,
 where by possibility the Issue between them may in-
 herit, if such a man dye, his Wife shall recover the
 third part of all the Lands; whereof the Husband
 was sole seised, any time during the Coverture; by
 a Writ of *Dower*, though he dyed not seised, and
 although that he made Alienation thereof in his life
 time.

Where the Husband dyed seised, and the Wife
 brings a Writ of *Dower*, and recovers, she shall recover
 damages, for the profits of the Land incurred, from
 the time of the death of her Husband, but if there
 were any Estate or Alienation made of the Lands,
 &c. during Coverture, so that the Husband dyed not
 seised, in that case she shall recover no damages for
 mean

mean profits, although she recover the Land, 2. *Inst.* 80. *Co. Lit.* 32. b. Dower *unde nihil habet* lyes for a wife that hath received no part of her Dower. The Demand is instead of a Count. No speciall Essoyn lyes : Part shall not demur for the nonage of the Heir. Warranty of the Ancestor is no bar.

It is not necessary that seisin should continue during Coverture, for being once seised it sufficeth, although he alien Lands or extinguish rents, yet the woman shall be Endowed.

But it is absolutely necessary that the marriage continue, for if that be dissolved, the Dower ceaseth.

In case of *Elopement*, which is where a woman leaves her Husband, and goes away with an adulterer, and dwelleth with the adulterer, without voluntary reconciliation to her Husband, by this she shall loose her Dower. *Co. Lit.* 32. b.

A Woman shall not be endowed of a Common without number in grosse, nor of an Annuity, &c. nor of Rents, &c. If the Freehold of the Rents were suspended before the Coverture ; but she shall be endowed of Tithes, of the third part of the profits of Courts, Fines, Herriots, &c. *Co. Lit.* 32. a.

She shall be endowed according to the value of the land at the time of the Assignment, & not according to the value as it was in the time of her Husband, whether the value of the Land by building or otherwise be improved, or whether it be impaired by the Heire. *Co. Lit.* 32. a.

If the wife be past the age of nine years at the time of the death of her husband (albeit she were but four years old when she was married) yet she shall be endowed. *Co. Lit.* 33. a.

If a Woman marry before she be of years to consent, which is twelve in a Woman, and fourteen in a Man, yet that imperfect or inchoat marriage (from which
either

either of the parties at the age of consent may disagree) after the death of the Husband, shall give Dower to the Wife. *Co. Lit.* 33. a.

If the Heir, &c. put her out within forty dayes, she shall have a Writ of *quarentina habenda*, which is a Writ that the Law gives, where a man dyes seised of a Mannor, Place, and other Lands, whereof the wife ought to be indowed, there the woman may abide in the Mannor, Place, and there live of the store and profits thereof for the space of forty dayes, within which time her Dower is to be assigned as by *Magna Charta*, Chapter 6, 7. If she marry within the forty dayes she loseth her quarenture 2. *Inst.* 16, 17. See the nature of the Writ of *querentina habendo*, 2. *Inst.* 10.

There needeth neither Livery of Seisin, nor writing to any Assignment of Dower, because it is due of common right, and the Assignment must be of some part of the Land, or of a Rent, &c. issuing out of the same. *Co. Lit.* 34. b.

The Assignment must be certaine and absolute, and by such as have Free-hold, or against whom a Writ of Dower lyes. *Co. Lit.* 34. b. 35.

Assignment of Dower must be either by the Sheriff by the Kings Writ, or else by the Heir or other Tenant of the Land by consent and agreement between them. *Co. Lit.* 34. b.

A Joynture was formerly no bar of Dower at the Common Law, but now it is by the Statute of 27 Henry the eighth, if the Joynture be made to the wife, according to the Purview of that Statute. *Co. Lit.* 36. b.

Six things are required to a perfect Joynture.

First, It is to take effect for her life in possession, or profit, presently after the Decease of her Husband.

Secondly, That it be for tearme of her own life, or greater estate, *Co. Lit.* 36. b.

Thirdly,

Thirdly, It must be made to her selfe, and no other for her.

Fourthly, It must be made in satisfaction of her whole dower, and not of part, &c.

Fifthly, It must be either expressed or averted to be in satisfaction, &c.

Sixtly, It may be made either before or after marriage.

If the Jointure be made before marriage, the wife cannot wave it and claime her dower at the common Law; but if it be made after marriage, she may wave the same. *C. Lit. 36. b.*

A jointure made to the wife above or under the age of nine yeares is good. *ib*

The wife shall not be indowed of Lands which the husband holdeth jointly with another at the time of his death, &c. for that the joint Tenant which surviveth, claimeth the lands by the feoffements, and by the Survivorship which is above the title of dower; but the tenants in common have severall Free-holds and inheritances, and their moyeties shall descend to their severall heires, and therefore their wives shall thereof be indowed. *C. Lit.*

THe processe incident to this Action of Dower are.

First, A Summons between the *Teste*, and return, whereof there is five returnes. *Per Statute 16. Cor. Cap. 6.*

And if the tenant neither appeare, nor cast an Escoin entring a *Ne recipiatur*, a grand Capelies to seize the Lands, &c. for that for such his default, the tenant shall loose his land.

But if he wage his Law of *Non Summons*, he shall save his default, and then he may plead with the Demandant. Note that if he wage his law, the writ abates

bates, the usuall way is to remit the default. No special Essoine lies.

Note that in a grand Cape, the tenant shall be summoned to answer to the Default, and further to the demandant; but in *Petite Cape*, he shall be Summoned to answer to the default only and not to the demandant, and it is called a *Petite Cap*, because it inclines lesse then the other.

And if the tenant by the returne of the Summons, essoines, the demandant adjournes *sine retournes* in such case, the attorney for the tenant, may enter with the Filizer, that the Tenant appeares and praies view, &c.

Then a writ of view * goes out, * *Unlesse the* whereby the [Sheriff is to shew the te- *View be counter-* nant the lands in question, which *pleaded of which* supposeth the tenant knowes not well *see 2 just. 481.* what land it is that the demandant asketh, by the returne of which writ of view the tenants attorney takes a declaration.

Note that where default is made before appearance there at the demandant his suire, the grand Cape is made by the Philizer of the county where the land lyeth. Note the *Petite Cape*, after appearance and declaration received, is not made by the Philizer.

The forme of a Summons. Reg. 170.

Command A. that justly, &c. he render vnto B. who was the wife of C. her reasonable dower which happeneth to her of the Free-hold which was of the aforesaid C. formerly her husband in N. whereof she hath nothing, &c.

In

In case the tenant appear upon the summons, &c.
Then you declare as follows

Lincolne ff.

ED. widdow, who was the wife of G. D. by A. B. her attorney, demands against J. D. the third part of ten Messuages, five cottages, and two hundred acres of land, three hundred acres of Meadow, and two hundred acres of Pasture with the appurtenances in C. and B. &c. as the dowry of her the said E. D. of the indowment of the said G. D. in time past her Husband, &c.

To this action there may be severall pleas, as the case may require.

The most generall plea is, (*Ne unques seizi que Dow-er*) That is to say that the husband was never seized of any Estate, whereof the wife can be indowed, the forme whereof is as followes.

Ne unque seizi que dower, pleaded in Dower.

AND the aforesaid (defendant) by A. B. his attorney, comes, and saies, that the aforesaid A. ought not to have her dowry of the tenements aforesaid, with the appurtenances whereof, &c. Of the indowment of the aforesaid D. once her husband, &c. Because he saith, That the aforesaid D. once her husband, &c. neither at the day wherein he married the aforesaid A. nor at any time after, was seized of the same tenements With the appurtenances whereof, &c. nor of any part thereof of such an estate, so that the aforesaid A. thereof might be indowed.

And of this he puts himself upon the country, and the Plaintiff in like manner, therefore command is given to the Sheriff that he cause to come here twelve, &c.

There is a plea likewise of *Non tenure*, which is as followes.

Non



Non-tenure pleaded in bar of Dowry

ANd the said defendant by J.D. his attorney, comes and saies, that he cannot render to the aforesaid *A.* her Dowry, of the Mannor aforesaid with the appurtenances, because he saith that he is not there- of tenant, as of his Free-hold, nor was the day of the issuing forth of the originall Writ of her the said *A.* nor at any time after: And this he is ready to aver, whereupon he prayeth judgment of the writ aforesaid, &c.

Issues upon the non-tenure.

AND the aforesaid *A.* saith that the Writ aforesaid, for any thing in the said plea before alleaged, ought not to be quashed, because she saith, that the day of the issuing forth of the originall writ of her the said *A.* C to wit, (such a day and year) the aforesaid defendant in his owne right was tenant of the Mannor aforesaid with the appurtenances whereof, &c. as of his free-hold, as by the same writ above is supposed; and this he praies may be inquired by the Countrey, and the aforesaid defendant in like manner, therefore command is given to the sheriff, that he cause to come here twelve, &c.

Also *Nonage* may be pleaded in bar of dower, and then it is thus.

Nonage in Barr of Dower.

AND the aforesaid *R. M* by *T. G.* his attorney, comes and saies, That the aforesaid *N.* ought not in this behalfe to have dowry, because he saith, that the aforesaid *N.* at the time of the death of the aforesaid *R.* in
M time

time past her husband, of whose indowment, &c. she was not of that full age, that she should deserve dowry that is to say of nine yeares and a halfe : And this he is ready to aver, whereupon he prayes judgment whether the aforesaid N. ought to have her dowry of the Tenements aforesaid with the Appurtenances, &c.

Issue full of Age.

AND the aforesaid N. saith, that she the aforesaid N. was at the time of the death of him the said R. in times past her husband, &c. of such age as that she might deserve dowry ; that is to say, Of nine yeares and a halfe and above, and this she praies may be inquired of by the country, and the said R. M. in like manner, &c. Therefore command is given to the sheriff that he cause to come here twelve &c.

Elopment may also be pleaded in bar of dower, and then it is thus.

Elopment in Bar.

AND the aforesaid J. and L. by T. L. his attorney comes and saies that the aforesaid R. and A. ought not to have against them the dowry aforesaid of the mannor and tenements aforesaid with the appurtenances, of the Endowment of the foresaid E. in times past her husband, &c. Because they say, That the aforesaid A. in the life time of the aforesaid E. in times past her husband, &c. Of her owne voluntary will and accord at B. in the county of M. left him the said E. in times past her husband, and went from him with one M. R. in the parish of S. in the county of M. and after there with the same M. did lead her continued life in Adultery, during the life of him the said E. in time past her husband, &c. Without thar, that the aforesaid A. to the said E. her husband, in the life time of the said E. in

E. in time past her husband, &c. was reconciled to him, and this they are ready to aver, whereupon they pray Judgment, whether the aforesaid R. and A. in this behalfe, ought to have her dowry, of the Mannor and Tenements aforesaid with the appurtenances, of the Endowment of the aforesaid E. in time past her husband, &c.

Reconcilement pleaded to the Elopement.

AND the aforesaid R. and A. say that they by any thing before alleaged, ought not to be debarred from having the dowry of the aforesaid A. of the Mannor and tenements aforesaid with the appurtenances, against them the aforesaid I. L. because he saith that after the departure aforesaid, by the said I. and L. supposed to be made, and the aforesaid E. in his life time her the said A. of his owne accord, and without Ecclesiasticall compelling, at L. did reconcile, and suffered her to live with him; and this they are ready to aver, whereupon they pray judgment, and the dowry of her the said A. of the mannor and tenements aforesaid with the appurtenances, together with their damages, by reason of the detayner of the dowery aforesaid, to be adjudged unto them, &c.

Issue upon the reconcilement.

AND the aforesaid I. and L. say, that the aforesaid E. in his life time, did not reconcile in manner and form, as the aforesaid R. and A. have above alleaged and of this they put themselves upon the country, and the aforesaid R. and A. in like manner, therefore command is given to the Sheriff, that he cause to come here on three weeks after the holy, Trinity, twelve, &c.

A man may call to warranty in dower, and then is the party called to warranty, summoned in the County where he lies, and that by the aide of the court and this is called a Counter-plea of the voucher in Dower, and is thus.

Counter-plea of the voucher in Dower.

AND the aforesaid I. by C. B. his attorney, comes and calls thereupon to warranty R. C. Gentleman summoned in the County aforesaid, by the ayd of the Court, &c.

To this the Defendant may reply, that the party calls to warranty, hath nothing in the Lands, &c.

And the aforesaid I. sayes, that neither the aforesaid R. whom, &c. nor any of his Ancestors, had any thing in the tenements aforesaid with the appurtenances, in his Demesne as of Fee, in Reversion, or, &c. from the time of the death of the aforesaid W. C. in time past her husband, &c. unto the day of the issuing forth of the Originall writ of her the said I. to wit, (such a day and yeare) so that he could thereof Enseoffie the aforesaid Iohn, or any of his Ancestors: and this he prays may be inquired of by the country, and the aforesaid Iohn in like manner, therefore command is given to the sheriff, that he cause to come twelve. &c.

An Annuery may also be pleaded in bar of dowry but is too long here to receite.

To this Action, in case the tenant hath no speciall matter to plead in bar, then he may confesse an action by *Non sum informatus*, or let it passe by default, as in the ensuing.

Non Informatus in Dower.

AND the aforesaid E. by T. S. his attorney, comes and the same attorney sayes, that he is not informed by the said E. his Clyent, of any answer for the aforesaid E. to the aforesaid P. S. in the plaint aforesaid to be given, and nothing other he thereupon saith, by which the same P. S. should remaine against the aforesaid E. thereupon undefended: Therefore it is considered, that the aforesaid P. S. shall recover her seizin against the aforesaid E. of the third part of the mannor Parke, Free-warren, tenement, and advowson aforesaid with the appurtenances, and the aforesaid E. in mercy, &c.

And upon this the aforesaid P. S. praies the writ of the Keepers of the Liberty of *England*, to the sheriff of the county aforesaid to be directed, to cause him to give her full possession of the third part aforesaid with the appurtenances, and it is granted unto her, retorneable here in eight dayes after *S. Michael*, and also the same P. S. saies, that the aforesaid T. in time past her husband, &c. died seized of the Mannor, &c. in his demesne as of Fee, and of the advowson aforesaid, as of his Fee and right, and praies the writ of the said keepers of the Liberty, &c. to the sheriff of the county aforesaid to be directed, to enquire of damages and it is granted, unto her, retorneable at the aforesaid term &c.

Note that in this, as in other Reall actions, when you plead for the defendant, you say only (*comes and sayes*) and not as in other actions, defends the force and injury, &c.

VWhen issue joined you would goe to tryall, you must proceed with your *Venire Facias*, and *Habeas corpora*, and record, as in other actions; and upon tryall

the jury to give in damages for the maine profits, from the death of the husband, and for that you shall have Execution made by the clark of the judgments who entred up your judgment.

*If her husband
dey seized per
stat. Melb. ca, 1.*

And then you have a writ to the sheriff to give possession of a third part, &c. which writ being executed by the sheriff, is thus returned. Note If the tenant make default at the assize you must have a *Petit Cape* before grant of seisin can be awarded.

BY vertue, &c. and to the Schedull annexed (such a day and yeare) I have caused to be delivered to I. B. widdow in the aforesaid writ named, plenary seizin of the third part of the mannor of L. with the appurtenances in the same writ specified (*viz.* and rehearse the particulars in the writ) to be held to the aforesaid I. B. in severalty, by meats and bounds, in the name of the whole dower of her the said I. B. to her the said I. B. contingent of her whole mannor in the writ specified, as by the writ aforesaid to me is commanded, &c.

Formedon.

Formedon is a writ of right in its nature which intitles the demandant according to the forme of the gift.

THE first is *Formedon* in the Discender, which lyeth where tenant in tail enfeofed a stranger, or is disseised and dyeth, the heire shall have writ of *Formedon* to recover the estate. F. N. B. 211. for the *Formedon*

don in disc. see more at large F. N. B. 212. and *vet.* N. B. 143.

Formedon in discender lay not at common law, but is given by the statute W. 2. Cap. 1.

The second is *Formedon* in the remainder and that lies where one gives land in the taile, and for default of issues, the remainder to an other in taile, and that for fault of such issue the lands shall revert to the donor if the tenant in tail dye without issue, he in the remainder shall have this writ. For the *Form*: in *Rem.* see F. N. B. 217, b. U. N. B. 147. b.

Form. in reversion! for life or in fee upon a lease for life expired, for after the estate taile expired this writ did not ly at the common law, because it was an estate of Fee-simple upon which no reversion can depend.

The third, Is a *Formedon* in Reverter, and lyeth, where the tenant in taile dies without issue, and he in remainder dies also without issue, then the donor or his heires shall have a *Formedon* in reverter.

For the *Formedon* in reverter see F. N. B. 219 b. *vet.* N. B. 149. b.

Formedon in reverter is for the Donor after the estate taile determined, as (at the common law) if the donee in taile had aliened, and after dyed without issue, or if he had issue, & after he or his issue dyed without issue, otherwise it was if he had issue, and after had aliened and then had dyed without issue.

VWhere tenant in taile aliens or is disseized, or if a recovery be had against him by default

and that he dye, his heires shall have v. N. B. 143. b.

a *Formedon*, for the heire shall not have 211. 145.

other recovery for the possession, of his *Kitching* 247.

Ancestors then by *Formedon*, but if he be 12. H. 49.

outed of his own possession, as if he be

seized and put out he shall have, his writ of Assize. F.

N. B. 145.

Formedon

Formedon lies by the heire of a gift made before the Statute of *Westminster* 2. where the donee after the statute aliens and dies.

Note this is where there is tenant in dower the remainder to another in taile, *Sur intrusion après moit del tenant per courtesie* or in dower.

Where there is a Tenant in Dowet, or by the Curtesie. The Reversion to another in tail, if one intrude after the death of the Tenant in Dower, or by the heir of Curtesie, he in the Reversion shall not have intrusion, but a *Formedon*. *F. N. B.* 204.

Woman in tail takes a Husband, which aliens, and after they are divorced, and after the wife dyes, the Wife shall in this case have a *Formedon*, and not a *Cui in vita*. *F. N. B.* 204. k.

If Tenant in tail lets for life, and the Tenant for life aliens in fee, the Tenant in tail shall have a *Formedon* at his pleasure, & *consimili casu*. *F. N. B.* 207.

Where Land is given to one for life, the Remainder to the Father in tail (if it were executed in the Father) and he aliens; the Issue may have a *Formedon in Descender* generally; or may have a speciall *VVrit*, making mention how it was given for life, the Remainder to his Father in Tayle, and one or other is good. 44 *E.* 3. 6.

In Conveyance of degrees, you need not name him Heir, but Son of him which was not seised; but it is a surer way to name him Son and Heire to every one; if he were seised or not; but he cannot omit any in his *VVrits* which were seised. *Kitch.* 248.

If the Demandant omit in *Formedon*, one who held the Estate, that is to say, who was seised, the *VVrit* shall abate *Kitch.* 248.

The Demandant in this writ ought to make his Descend by all which hold the Estate, otherwise the *VVrit* shall abate. 44 *E.* 3. 40. 46 *E.* 3. 9.

Though

Though the Demandant be made Heire to him which dyed in the life time of his Father, which was not seised, yet the VVrit shall not abate, but is good.

48 E. 3. 7.

Note by the Register it is held, that he ought to make him Son to every one, and Son and Heir to him which last holds the Estate; but if he makes him Son and Heire to every one that is more, and good, notwithstanding that every one did not hold the estate 11 H. 6. 25.

The Writ is not the worse, although in the same it be mentioned that he is Heire of one, or that he should have scarce been heire to him if he had lived, if he be heire to him, that last was seised. 11 H. 4. 70.

The Demandant in *Formedon*, ought to name him Sonne and Heire to him that was seised, but if one survive his Father and were not seised, he need not name himselfe Heir but Son onely. F. N. B. 212. f.

Formedon did abate, for that the Demandant made himselfe Cosin and Heire to the Donee where his Father was seised after the death of the Donee, and no mention was made of him. 10 E. 3. tit. Form. 41.

Esplees shall be alledged in *Formedon in Reverter*, in the Donor and in the Donee, and in *Formedon in Discender*, and Remainder, in the Donee onely. 5 E. 3. 1. Fitz. 220. In a *Formedon in Discender* the Esplees shall be onely in the Donee, in a *Formedon in Remainder* for an estate taile, only in the particular Tenant to prove the estate taile executed. in a *Formedon in Reverter*, they shall be laid in the Donor and Donee, for there a Fee-simple is demanded. In a Lease for life, Remainder in taile, and the Lessee for life, and he in Remainder in taile dyes, the Issue in taile shall have a *Formedon in Discender*, and shall not make mention of the Tenant for life, therefore the Esplees shall be only laid in the tenant in taile, otherwise it is in such case of a Rever.

Reversion in taile granted, 9 H. 6. 53. 50 E. 3. 10.

Those Esplees is as it were the seisin or possession of a thing, Profit, or Commoditie, that is to be taken, as of a Common, the Esplees is the taking of the grasse or Common by the mouthes of the Beasts that Common there, of an Advowson by taking the grasse, tithes by the Parson presented thereto; of wood, the selling of wood, of an Orchard, the selling * of Apples and other fruit growing there: Of a Mill the taking of Toll is Esplees, and of *Vide Finch. 79. How Esplees* such like.

shall be alledged, and the formes thereof.

NOte that in a Writ of Right of Land or advowson, &c. The Demandant ought to alledge in his Declaration, that he or his Ancestors took the Esplees of a thing in demand, or otherwise the pleading is not good. 9. H. 6. 53.

Formedon in Remainder, he alledgeth Esplees in the Tenant for life, and not in the Donor.

Formedon in the Remainder, he counts upon the matter without laying Esplees in the Donor, and it is good. 27. E. 3. 36.

*Of what things a Formedon lyeth,
and of what not.*

FORMEDON lieth of Gorse, but not of an Advowson. F. N. B. 217.

It lies of Pasture for ten beasts, or a certain number, but not of Common; for there a Writ called (*Quod non permittas, &c.*) F. N. B. 212.

Formedon lies of a Common in grosse. Stat. 95.

Formedon lies of a Corody, that is to say, of Rent, and certain breads, &c. 18. E. 3. Stat.

It

It lies for the Moiety, or profit of a Mill, which is granted to one and the Heires of his body, and the Donee dieth, and his Heire is desorced of this profit; now the Heire shall have a Writ of *Formedon* in the *Discender* for this profit.

The form of the Writ when it is in the *Discender*, runs thus:

In the Discender.

THe Keepers, &c. to the Sheriff of *L.* greeting, cominand *T. B.* that, &c. he render *J. C.* the Moiety of the profits coming of two Mills of him the said *T. B.* in *M.* which *R. B.* &c. gave to *T. C.* and to the heirs of his body issuing, and which after the death of him the said *T. C.* &c. ought to descend, &c.

If the *Farmedon* be in the Remainder, then the Writ runs thus:

In the Remainder.

THe Keepers of the Liberty, &c. to the Sheriff of *G.* Greeting, command *A.* that he render *B.* one Messuage, and twenty acres of land, &c. which *C.* gave to *D.* and the heirs of his body issuing; so that if the same *D.* died without heir issuing of his body, the aforesaid Messuage, and twenty acres of land, with the appurtenances, should remain to the aforesaid *B.* and his heires, and which after the death of the aforesaid *D.* to the aforesaid *B.* ought to remain by the form of the Donation aforesaid; because the aforesaid *D.* died without heir of his body issuing, as it is said, &c. unlesse, &c.

If the *Farmedon* be in the Reverter, then thus,

In the Reverter.

THe Keepers of the Liberty, &c. to the Sheriff of G. Greeting, command *A.* that he render *B.* one Messuage and twenty acres of land with the appurtenances, in *G.* which *C.* father of the aforesaid *B.* whose heir he is, gave to *I.* and *E.* his wife, and to the heirs of their body issuing; and which after the death of the aforesaid *I.* and *E.* ought to revert to the aforesaid *B.* by form of the gift aforesaid, for that the aforesaid *I.* and *E.* died without heirs issuing of their bodies, as he says, &c.

This Writ is called a *Summons*, and hath nine Returns, betwixt the Teste and the Return, and the Proesse are the same which are in Dower after the *Summons*, that is, a *Grand Cape*, Writ of *View*, and *Petite Cape*.

In this Action, as also in that of Dower, and other reall Actions, the Plaintiff is called Demandant, and the Defendant Tenant; and in mixt Actions, Plaintiff and Defendant.

Note that there is great care to be taken by the Attorneys on both sides, in the course of casting Essoyns, adjourning and entring, *Ne recipiantur*, with the Clerk of the Essoynes, and getting *Non suites*; for that thereby much prejudice or advantage may come to their Clients Causes.

Note that at the Common Law, in a *Quare Impedit* the Proesse was summons, attachment, and distresse infinite, by the Statute of *Marlb. cap. 12.* if he appear not at the Grand distresse, Judgement shall be given for the Plaintiff, and a Writ to the Bishop.

If we should now in this Action, as in that of Dower, descend to the severall Declarations, in order

to the severall Formedons in Descender, Remainder and Reverter, together with the various Pleas thereto, it would take up more room then can be spared in this little Tract.

Let it suffice that we told you that the Proceeds were much alike to that in Dower.

Let's proceed to a Quare impedit.

Quare Impedit lies where a man hath purchased a Mannor, to which an Advowson of a Church is appendent, a Parson dies, and an estranger presents his Clerk, *V. N. B. 26.*

Affise of Darrein Presentment lies where I or my Anceltor have presented to a Church our Clerk, and after our Clerk dies; so that the Church becoms void, and an estranger presents his Clerk to the same Church, and disturbs me, I may have this Writ, or a *Quare Impedit*, at my election, *V. N. B. 25.*

Also, if the Plea be depending between two parties, and be not discussed within six Moneths, then the Bishop may present by *Lapse*, and he that hath right to present, shall recover his damages, as it appears by the Statute of *Westminster*, 2. Chapter the fifth.

A Writ of Right of Advowson lies as here it is said. *V. N. B. 36. b.*

Also if one have right to present after the death of a Parson, and bringeth no *Quare Impedit*, or *Darrein presentment*, but suffereth a stranger to usurp upon him, yet he shall have a Writ of right of Advowson, but this Writ lieth not, unlesse he claim to have the Advowson to him and his heirs in Fee-simple.

A *Quare Impedit* may be brought by him who hath a grant of the next avoidance.

It

It lies for the Moiety, or third part of the Advowson, and of the Advowson, or Moiety of the third part,

It lies for a Chantry, which is a Donative, and he hath it by Letters patents, and that it be void, and he present to it his Clerk, who is disturbed by another, or another presented to the said Chantry, he which hath the Right, shall have his *Quare Impedit*. V. F. N. B.

Formerly a *Quare Impedit* might be brought for an Abbey, or Priory.

A *Quare Impedit* lay likewise for an Hermitary, it was brought formerly against the Bishop, together with others that claim or disturb: The form of the Writ generall is thus:

Quare Impedit.

THE Keepers of the Liberty of *England*, &c. to the Sheriff of L. Greeting, &c. command A. B. that justly, &c. he permit T. L. to present a fit Parson to the Church of L. which is void, and belongs unto his Donation, &c.

Note, The Procelle at Common Law was sued, attach'd, and distresse infinite; but *per Stat. Mar. 12.* if he appear not at the grand distresse, Judgement shall be given for the Plaintiff *Vide c. 2. Inst. 124.*

This Writ is a *Summons* at the plaintiffs suite, and if there be two or three Defendants, they may all essoyn one after the other, and after they have essoyn-

This delay is avoided by the ed, your Proceeds are the same, as in the Action of Partition by a *Pone* and *Distringas*, which makes the Pro-
Statute, ut *supra*, and by the same Statute, the proceedings are but *sum* fifteen dayes, v. 15. dayes.

ceedings of this Action very tedious, the Defendant using all the possible delayes he can, for that most usually he hath gotten into possession, and so holds them Plea with their own Weapons, and gains many times a yeare or two, the profits of the Tithes.

But in case the Church be void, and that the Plaintiff do feare that the Defendant will get in, or formerly that the Bishop will Collate his Clerk, then he might have a Writ directed to the Bishop, which is called, *Ne admittas*, and this Writ must be brought, while the Action is depending in the Common Bench, whether by *Quare impedit*, or *Darreyn presentment*, and this Writ ought to be sued within the six Moneths after the voidance, for after the six Moneths he shall not have this Writ; for then the Living may be presented unto by *Lapse*, and therefore it is in vain then to sue this Writ, for that the Title of presenting is devolved to the Bishop, but the King might sue this Writ after the six Moneths, having a Writ of *Quare impedit*, or *Darreyn presentment* depending, according to that Maxim. *Nullum tempus occurrit regi*. and the Writ of *Ne admittas*, is as follows, in case it were for the king in his time.

A *Ne admittas*.

Charles by the Grace of God, &c. To the Venerable Father in Christ, &c. by the same Grace, Bishop of Winchester, greeting. We prohibit you, that you admit not any Parson, to the Church of S. which is void, as it is said, and for the advowson whereof there is contention moved in our Court, between Us and A. (If between private persons) then (between A. and B.) untill it be discussed in the same Court, whether unto us, or unto the aforesaid A. it appertaineth

taineth to present unto the Advowson of the same Church, &c. *V. N. B.* 26.

Note, that the Defendant as well as the Plaintiff, may sue out this Writ, if the Defendant do suppose

that the Bishop will admit the Clerk of the Plaintiff, the suit depending, *Vid. F. N. B.* 38. *h.* but as we said before, this Writ of

Ne admittas lies not, unlesse the Plea be depending in Court, by *Quare impedit*, or *Darrein presentment*, and for that purpose, there is a Writ in the Register, directed unto the Chief Justice of the Common Bench, to certifie the king in the Chancery, whether there be any Plea depending before him and his companions, by Writ between (such and such), and by this it seemed, that the *Ne admittas* should not be granted, before the king were certified in Chancery, and such a Plea, of *Quare impedit*, or *Darrein presentment*, were depending in the Common Bench. But at this time the course is otherwise, that the *Ne admittas* may be granted out of the Chancery, directed unto the Bishop, that he shall not admit, &c. before that the king be certified in Chancery, that such Plea of *Quare impedit*, or *Darrein presentment* is depending in the Common Bench.

And if the truth be that there be no such Plea depending in the Common Bench, then the party grieved may require the Chief Justice, to certifie the king in his Chancery, that no such Plea is there depending, upon which the party grieved shall have a Writ to avoid the *Ne admittas*, *F. N. B.* 38. *h.*

If the Defendant or Defendants in this Action do appear, you must prepare your Declaration, wherein you must lay down your Title, which many times causeth the Declarations and Pleadings to be very long in this Action, and therefore cannot be expected to be inserted here, as in other small ones.

In case after speciall pleadings, you come to an Issue, and having your issue joyned, and your paper-book made up, and that you would go to triall, you must take your *Venire facias*, which differs not from other *Venire facias*, but only in these words, (of a Plea *Quare impedit*) and that made, signed, sealed, and returned, you must sue out your *Habeas corpus*, and proceed with your Record, as in other.

When you have a Verdict for the plaintiff, and the *Postea* returned, and Judgement entred; you may then have a Writ to the Bishop, to admit your Clerk, or to the Metropolitan, which is as this; when the Recovery is had against the Bishop himself.

The King, &c. To the venerable Father in Christ W. Bishop of Winchester greeting. Whereas T. L. Knight, in our Court, &c. hath recovered against you his presentation to the Vicaridge of W. We command you, that at the presentation of him the said T. to the aforesaid Vicaridge, you admit a fit person, &c.

And if a man have his recovery against any other then the Bishop; then the Writ that shall be made unto the Bishop shall be in this wise.

Whereas T. L. Knight, hath recovered against I. P. his Presentation, &c. We command you, that notwithstanding the claime of the aforesaid I. P. at the presentation of the aforesaid T. I. you admit a fit person, &c.

Note that upon this writ, he shall have an *Aliis*, and a *Plures*, if the Bishop do not execute the writ, and an Attachment against the Bishop if neede be.

Come we now to Actions of Waste. Co. Lit. 54.

THis Action lyes, where Tenant for Term of years, Tenant for tearm of life, Tenant for tearme of anothers life, Tenant in Dower, Tenant by the Curtesie of England, or Guardian in Chivalry, doth make waste or Destruction upon the Land or Houses, that is to say, pulleth down the House, cutteth down Timber, or suffereth the House willingly to fall, or diggeth the ground, then he in the Reversion shall have a VVrit for the waste, and shall recover the place where the waste was done, and treble damages against him that so committed waste. At the Common Law waste was punished in three persons, Tenant in Dower, by the Curtesie, and Guardian. There is also an Action of waste by custome as in London.

And the remedy by the common Law was 1. a Prohibition before waste done, 2. after waste done an Action of waste, say which was also in the nature of a Prohibition, and the VVrit did conclude, *contra Prohibitionem*, &c. albeit no VVrit of Prohibition had been sued. *Quia*, the Law is a Prohibition it selfe.

And upon a Recovery with Tenant in Dower, and *per* Curtesie, the punishment was two fold, 1. due to the value of the waste, and a keeper appointed to withstand any waste.

The penalty of the Guardian was, 1. to lose the custody, 2. to yeild the value in damages, 3. he should be fined to the King.

And *per Stat. W. 2. Cap. 14.* The Prohibition of wast upon which an Attachment did lye is taken away, and in lieu thereof the Summons is given.

But if a man cut down Timber without license, and wherewith repaire old Houles, that is held no waste,

waste, but if he therewith build new Houses, then the cutting down of such Timber is waste also. *Co. vi. C. Lit. 53.*

The cutting down of Under wood, or VVillowes, which are no Timber, shall not be said to be waste; but where they grow in the sight and shadow of the house *Co. Lit. 53.*

There are both negligent and voluntary wastes, and these are alike punishable, as where the Tenant or Lessee is bound by Law to keep the House in good repaire, as they were, when he came to them.

In this case if he do not so but suffer any part of it, by his negligence to grow ruinous, this is waste, for which the Lessor may sue the Lessee.

VVhere there is no Timber upon the Lands to make repaire, yet is it waste to suffer it to decay, for this, that the Tenant must procure Timber at his own charge, *Dyer 226.*

Its waste where a man prostrates, abates, or breaks down any of the housing; either the whole or part (that is) any of the Principall walls, or walls of partition in Chambers, whether they be of stone or Mud.

VVhere by a violent tempest, &c. the house comes to be uncovered, it ought to be repaired by the Tenant in convenient time, otherwise it is waste, to suffer the house to be burnt by negligence, &c. is waste, *Co. lib. 4. 63.*

If the house be ruinous, when the Tenant first comes into it, and he pull it down and do not build it up againe this is waste.

VVhere a man either takes away, pulls, or breaks downe the wainescotes, Doores, windowes, Benches, or any other things that are inseperable incidents of the house, being set up and fastned by the Lessor or Lessee, or other, is waste.

What is said to be waste in Trees or Woods.

Vide. Co. Lit.
53. Kjt. Eng.
 332.

VHere there is Oake or Ash which are held Timber, in most Countryes, (and Elme in some Countryes where Timber is scarce) whether young or old, above or under twenty yeares of age, to sell this, or to imploy it to build a new house, or a new room, or any other purpose then to the Repaire of the old house, or housing which are on the Land, or were at the time of the Lease, &c. in decay by age or Tempest, is waste.

If a man sell Timber, although with an intent for Reparations, and if he after sell it, or imploy it to any other use, this is waste, and if after sale he buy it again, and then imploy it for Reparations, yet this hath been held to be waste.

Where a man sells Timber for Reparations, and so imployes it, yet if it be done at such an unseasonable time, as that the Timber dye in the root; this is waste.

To cut downe a Wood, and after to suffer cattell to crop it when its newly felled, whereby it is killed, or to root and stub it up, this is waste.

To cut down Timber Trees for fire-boote, hedge-boote, &c. where there is enough of other boot, this is waste.

To cut down such Trees for fireing, as are fit for better use, being Timber, and onely hollow, and dry at the top is said to be waste.

But if they be hollow, dry, and dead throughout, that they beare neither fruits nor leaves in Summer, if the Tenant cut downe such Trees for fire-boot, it is no waste.

To

To cut down more for fire boot, hedge-boot, and house-boot, (to keep it as he found it) then is necessary, or to cut down green wood when there is sufficient dry, and dead wood, is waste.

To cut down Fruit-trees, Apple-tree, or Pear-trees, is waste, if they be growing in a Garden, although for reparation, is waste.

Such Fruit-trees, although half broken by the winde, or otherwise, if they do yet bear fruit, or the young springs of them, that may bear fruit, if the Tenant cut them down, or pull them up, it is waste.

VWhere a man ears up deep meadow, not plowed in mans memory, or grubs up wood by the roots, and turns it into arable; or on the contrary, turns arable into wood, it is waste.

To open or dig new Quarries, for coal, stone, metall, gravell, lime, clay, or the like, this, unlesse there be speciall words in the Lease to warrant it, is waste, although it be not waste for a man to dig forward in a Myne that was opened before.

It is no waste to dig the land for gravell, clay, &c. For necessary reparations, &c.

HAVING gone thus far in shewing what is waste, let the Attorney be well advised he bring not an Action of waste, where the Lease, or other writing, by which the Tenant holdeth or claimeth, have not that clause in it (without impeachment of waste) in which case the Lessee can do no waste, &c.

For the unfolding of this clause, (without impeachment of waste) observe, that,

An impeachment of waste, doth signifie a restraint from committing of waste, in lands or tenement, &c.

And this word (without) added to impeachment of waste, intimates a liberty to commit waste, and

an Estate without any such restraint, *Vid. Co. lib. 11. 82.* this clause well expounded.

Those and the like words inserted in the Deed, &c. are said to be annexed to the Estate, and they do change the quality of the Estate, and make the Tenant herein, in the nature of a Tenant in tail, and it adds that priviledge thereunto, that they give the Lessee a power and interest to make waste, and to dispose the things to his own use; and here, if the Lessor bring an Action of waste, the Tenant may bar him with this clause.

If it be not those very words, or the like sence, they are not good; for if the words be without impeachment of waste, by any VVrit of waste, the words in this case are more tied up, and are not so large, they give not such a power to the Tenant, nor alter the property, they onely discharge the Action; so that the Land-lord can bring no Action against the Tenant for the waste done.

The words (without impeachment of waste) must be inserted in the same Deed, whereby the Estate is made, or another Deed made at the same time: For if he make his Lease without this clause, and after willeth that the Lessee shall hold without impeachment of waste; it is held those words work nothing, either to discharge the Action, or give an interest.

If a man make a Lease for life, and by his Deed, grant that if any waste be done, it shall be redressed by neighbours, and not by suit or plea: yet an Action of waste will lie.

This priviledge gained by those words where it is, may be lost; for it is annexed onely to the privy of Estate: And therefore if one that hath this priviledge annexed to his Estate, agree to change his Estate, the priviledge is gone; as where he that hath a Lease

a Lease for years, with this clause in his Deed, accept of a Deed of confirmation of his Estate without this clause.

The Processes incident to this Action, are,

1. A Summons, which is made by the Cursitor of the County, where the house or land lies.

This Summons, if against a Tenant in Dower, is as followes.

THe Keepers of the Liberty of *England, &c.* To the Sheriff of *L. &c.* If *A. D.* shall secure thee, *&c.* Then summon by good summoners, *T. B.* which was the wife of *C.* that she be before our Justices at *Westminster*, on the morrow after the holy *Trinity*, to shew wherefore she hath made waste, sale, and destruction, in the lands, houses, woods, and Gardens, which she holds in Dowry of the inheritance of the aforesaid *A.* in *N.* to the disinheriting of him the said *A. &c.*

Neither in this Writ, nor in a VVrit of waste against a Guardian, a man shall not be tied to rehearse the Statute which gives a Writ of waste, for that very reason, that they were actionable before the Statute.

If the VVrit be against Tenant for term of life, or of years? then it goes in this form:

THe Keepers, *&c.* If *A. &c.* VVherefore by the Common Counsell of the Commonwealth of *England*, It is provided, that it shall not be lawfull for any to make waste, sale, or destruction, in lands, houses, woods, or Gardens; the said *B.* of lands, houses, and Gardens, in *L.* which the aforesaid *A.* demised unto her, *&c.* hath made waste, *&c.*

This VVrit being returnable on the day of three

weeks after Saint *Michael*, the Defendant may, if he please, *Essoin* upon that return; which if he do, then the Plaintiff may adjourn it unto the morrow after Saint *Martin*; which if so, then the next Proceſſe is a *Pone*, which is to be made by the Phillizer of the County, and may be made returnable in eight daies of Saint *Hillary*.

Upon the return of this *Pone*, and filing it with the Phillizer, he maketh out a *Distingas*, which you may have returnable in eight daies of the Purification of the blessed Virgin *Mary*, as we shewed before in the case of partition, &c. Upon the *Distingas*, if the tenant doth not appear, you have judgement by the Statute 2. *VP. ca* 14. And as I told you before in other Actions, in case the Defendant *Essoyn* not upon the Summons, he may upon the *Pone*.

Note, If the Lessee appear upon the distress & plead, and after make default, the plaintiff shall not by the Stat. 2. *W. ca* 14. have a *VVrit* to enquire of the waste, because it is out of the words and purview of the Act.

In case the Defendant appear, and that you declare, your form is as follows: in case it be against Tenant for years.

Wilt. ff.

A. *A.* Knight and Baronet, was summoned to answer *W. Earle* of *S.* of a Plea wherefore; where as by the Common Counsell of the Commonwealth of *England*; it is provided, that it shall not be lawfull for any to make waste, sale, or destruction of lands, houses, woods, or Gardens, to him demised for term of life or yeares, he the said *A.* of houses in *D.* which he held for term of yeares, by the demise of the aforesaid *Earle*, hath made waste, sale, and destruction, to the disinheretance of him the said *Earle*,

Earle, and against the form of the provilion aforesaid, &c. and whereupon the same *Earle* by *E. H.* his Attorney, sayes, that whereas he himself was seized of one Messuage with the appurtenances, called *B.* Farm house, in *D.* aforesaid, in his Demesne, as of Fee, and being so thereof seized, (such a day and year) at *D.* aforesaid, did demise the Messuage, aforesaid, with the appurtenances (amongst other things) to the aforesaid *Anthony*, to have and to hold to him the said *A.* and to his Assignes, from the Feast of Saint *Michael* the Arch-angel then last past, unto the end and term of twelve years from thence next following, fully to be compleat and ended; by vertue of which demise, the aforesaid *A.* into that Messuage with the appurtenances, did enter, and was thereof possessed; and he being thereof possessed, the same *A.* made wast, sale, and destruction in the Messuage aforesaid, with the appurtenances, of houses, that is to say, by throwing down two barns, the price of either of them twenty pounds, parcell of the Messuage aforesaid, above demised, and two houses, called out-houses, the price of each of them eight ponnys, in like manner parcell of the Messuage aforesaid, above, as aforesaid demised, and the timber of the same barns and houses so thrown down, taking, burning, and selling, to the disinherittance of him the said *Earle*, and against the form of the provilion aforesaid; whereupon he saith, that he is damnified and hath damage to the value of one hundred and fifty pounds, and thereupon he brings his suit, &c.

And the aforesaid *A.* by *I. D.* his Attorney, comes and defends the force and injury, when, &c. and whatsoever, &c. And by protestation that the aforesaid two barns, and two out-houses, were not parcell of the Messuage aforesaid, to him the said *A.* by
the

the aforesaid *Earl*, in form aforesaid demised ; by protestation also, that the same barn, or out-houses, were not of so much value, as the said *Earl* by his Declaration aforesaid hath above supposed ; for plea he saith, that he hath made no waste, sale, or destruction in the Messuage aforesaid, as the aforesaid *Earl* hath above against him declared, and of this he puts himself upon the Countrey, and the aforesaid *Earl* in like manner. Therefore command is given to the Sheriff, that he cause to come thoe in eight daies after the purification of the blessed Virgin *Mary*, twelve, &c. By whom, &c. And who neither, &c. To recognize &c. Because as well, &c.

Thus you have a Declaraion in waste, and a Plea pleaded to it, and Issue joyned, and this is against Tenant for term of years : now the Declarations in this Action vary, as to the severall persons that bring the Action, and the severall persons against whom it is brought.

As where it is brought by the heir in tail, against Tenant for life.

Where it is against Tenant in Dower, as before you saw in the Summons.

Also where the purchasor of the Reversion brings it against Tenant for years.

Also it may be brought after a Fine levied ; in all which cases, the Declaration must vary, according to the Cause, in all which cases, as also in divers other proceedings of other natures, I refer you to a Book printed in *Easter Term* last, intituled, *Declarations and Pleadings in English*, Collected by *Richard Brownlow* Esquire which would swell this small Tract beyond it's intended bignesse.

Now, as the Declarations are various, so are the Pleas, incident to them ; for they may be either general or speciall.

The

The generall Plea is, no waste made, &c.

The speciall Pleas are many, either in way of justification, or excuse, as the case is.

It is a good Plea, if the waste be laid, to be in not repairing, &c. That it was repaired before the Action brought, and this must be pleaded specially.

But to plead it was repaired after the Action brought, it is no good Plea.

It is a good Plea to any waste, that the Lessor gave authority to do it.

It is no good Plea to say, that the plaintiff did covenant to deliver timber from off the land, to do it, and refused, for the Defendant in this case may take it.

It is a good plea to say, The house or trees were burnt or spoiled, by fire, water, or winde, or that the ruine of them, was caused by some extraordinary act of God.

It is a good plea to say, That the house fell before the Lease; or that it was so extraordinary ruinous, and the timber so rotten, as that it would not bear repairing.

It is a good plea to say, That the Lease is surrendered to the Lessor, and he hath accepted it.

It is a good plea, That the plaintiff hath entred upon the land, and before such his entry, there was no waste committed.

It is a good plea, To plead that the plaintiff hath granted away his Estate, and before the grant there was no waste committed.

If the plaintiff by good words do effectually release the waste, this is a good plea.

Where the Lease was made without impeachment of waste, it is a good plea on the part of the Defendant.

It is no good plea in this Action for cutting down timber

timber, or pulling down the house, that the Lessor took away the timber or materials, &c.

It is no plea, That the Lessor hath a Covenant from the Lessee, not to do waste.

It is no good plea for the Tenant in an Action of waste for cutting of timber, to say, that he cut it, and keeps it till there shall be need; nor to say, he cut it generally for necessary reparations, unless he say withall, that he imployed it to that purpose.

And yet it were but reason it should be justified to cut it a little before it be used, for the drying of it, and making of it otherwise usefull, when an occasion of use is apparant at hand.

It is a good plea for the Defendant to say, That he cut it to make posts for inclosures, if he can withall prescribe that there have been alwaies such inclosures there.

But these, and many other, may now at the Election of the Defendant be omitted; and by the late Act of 22 October, 1650, he may plead not guilty, or some such other generall issue may be pleaded, and the speciall matter may be given in evidence.

Upon these, or any other issue joyned, and that you intend to go to triall, the directions that were given before in partition, Dower, &c. will guide you, both for the making your *Venire facias*, *Habeas corpora*, and Record; and likewise for your triall, and return of your *Postea*, and entring of judgement.

In this Action, as before you have heard your judgement is, that the plaintiff shall recover the place waited and his treble damages.

In case the Defendant pleads not, but lets it go by default, or confesseth the Action, when a Writ of Inquiry is awarded, and upon that the Sheriff is to inquire by the oath of twelve Jurors, what damages the plaintiff hath sustained, which he returns in an Inqui-

Inquisition, and then the party hath Judgement to recover the treble of it; and then hath he as in a Verdict after Judgement entred, a Writ of Seizin awarded. which is directed to the Sheriff of the County, where the house or land lies, to give possession to the plaintiff of the place or places waited, &c.

*Warrantia Carta comes next to
be treated of.*

THIS Writ lies where one is infeoff'd of Lands with Warranty, or where one releaseth to a man in possession, or confirmeth to one in possession with Warranty, and then he is impleaded, or seares to be impleaded. *Vid. N. B. 156.*

Where *Dedi* is contained in a Deed, (though there be no expresse Warranty the Feoffee is bound to Warranty during his life, but at this day upon one gift in taile by the word *Dedi*, the Donor and his heirs are bound to Warranty; and so it is of a Lease for life, resuming a Rent, though it be *Sans Fait*. 2 *Inst.* 275.

The processe in this Action are Summons in the first place, which is as follows.

The Summons in Warrantia Carta.

THe Keepers of the Liberty of England, &c. Command *A.* that justly, &c. he warrant to *B.* one Messuage, with the appurtenances in *D.* which he holdeth and claimeth to hold of him, and whereof he hath his Deed, as he saith; and unlesse, &c. Or otherwise, that justly, &c. he Warrant to *B.* the Manor of *N.* with the appurtenances, and the Advowson of the Church of *N.* which he holdeth, &c. And where-

whereof he hath his Deed, or the Deeds of D. his Father or Mother or any other of his Ancestors, whose heir he is, as he saith, &c.

Warrantia Charta is either provisionall or remediall for damage sustained, or *quia timet*.

The Proceſſe is Summons, Attachment, and distresse infinite before appearance, and if he appear, and after make default, a grand Distresse doth issue in lieu of a *Petit Cape*.

And although this Writ supposeth that he holdeth of the Defendant; yet is it not materiall whether he holdeth of him or not.

And also if the plaintiff hold by Homage Ancestrell of the Defendant any land, and is impleaded, and hath not any Deed of it, yet he shall have this Writ of *Warrantia Charta* against the Defendant, and the Writ will say, (whereof he hath his Deed) and yet he hath not the Deed to shew, but onely holdeth by Homage Ancestrell, which implies a Warranty, and for this in this case, these words (whereof he hath his Deed) is not materiall.

If a man Lease land for term of life, For all the parts rendring a certain rent, or make a gift of a *Warrantia* in tail, rendring rent without Deed, charta, see Of- and after the Lessee or Donee is impleaded, in such Action where he cannot vouch, then he shall have this Writ of *warrantia Charta*, against the Lessor,

or Donor, or his heir, who hath the Reversion; for this Reversion and rent reserved, makes a Warranty in Law, by the Statute of *Bigamis* the last Chapter, although he had not any Deed of it. 2 Inst. 275.

If a man give Land to another in Fee, by Deed, by these words, (I have given and granted, &c.) In this case, he shall be held to Warranty of this land to the Feoffee, by these words, and if the Feoffee be impleaded, he

he shall have a writ of *Warrantia Charta* against the Feoffor by these words; (I have given and granted, &c.) but not against his heir; for the heir shall not be bound unto Warranty by the Deed of the father, unless he oblige himself and his heirs to Warranty, &c. by expresse words in the Deed, as to say, I and my heirs, all the aforesaid lands will warrant, &c. 2 Inst. 275.

Note that he shall not have this Action of *Warrantia Charta* against the Feoffor, or against him against whom he hath Warranty, if he be impleaded in any Action wherein he may vouch him; for then he ought to vouch him to Warranty, and if he will not vouch him in the Action, he shall not afterwards have a Writ of *Warrantia Charta*.

Note that the Vouchee is either to defend the Right against the Defendant, or to yeild him other lands, &c. in value, and extended to lands, &c. of an Estate of Free hold or Inheritance, and not to any Chattell, reall, personall, or mixt, saying, onely in case of a Wardship granted with Warranty: for in the other cases, concerning Chattels, &c. the Vouchee shall have an Action of Covenant, if he hath a Deed: And an Action of the Case, or an Action of Detreipt, if it be by word of mouth.

The Proesse whereby the Vouchee is called, is a Summons *Ad Warrantizandum*, and whereupon, if the Sheriffe return that the Vouchee is summoned, and he maketh default, then there is awarded a *Magnum Cope ad valentiam*, &c. When, if he make default again, then judgment is given against the Tenant, and he to have over in value against the Vouchee; but if the Sheriff return that he hath nothing, then after a Writ of *Alias* and *Plures*, a Writ of *Sequimur sub periculo sub* is awarded,

This is awarded of a Voucher in any reall Action.

Vid. Co. Lit. 101. b. This case at large.

awarded, &c. And in such case, the Demandant shall not have Judgement to recover in value, &c. because the Vouchee was never warned.

In the Case of Homage *Ancestrel*, which is a special Warranty in Law, the lands that the Lord hath generally at the time of the Voucher, shall be liable to Execution in value, where he hath them by discent or purchase: But in the case of an expresse Warranty, the heir shall be charged but onely for such lands as he had by discent from the Ancestor, which creates the Warranty.

Note the lands of the Vouchee shall be liable to Warranty, that the Vouchee hath at the time of the Voucher, for that the Voucher is in lieu of an Action, and in *warrantia Carta*, the land which the Defendant hath at the time of the Writ brought, shall be liable to the Warranty.

If a man give lands in Fee with Warranty, and bindes certain lands especiall to Warranty, the person of the Feoffor is hereby bound, and not the land, unless he had it at the time of the Voucher.

A man may bring his Writ of Warranty of Charters, &c. in what County he will, if the Deed bear not date at a certain place of the County, for then he ought to bring in the Writ where the Deed bears date.

But if a man bring a Writ of *Warrantia Carta*, by reason of Homage *Ancestrel*, &c. Then he ought to bring the Writ in the County where the land lies.

The Summons in this VVrit we have shewed you before, upon which VVrit, as in the Case of waste, the Defendant may Essoin, and the Plaintiff adjourn; and for want of an adjournment of the Plaintiff, the Defendant may enter a Non-suit against the Plaintiff, provided there were a *Ne recipiatur* first entred with the Clerk of Essoynes, upon the day of Exception;

tion; and then in that case the Plaintiff is put to begin againe.

After the summons comes the *Pone*, and then a *Distingas*, and if the defendant appeare not, an *Alias distingas* setting issues, &c. And so distrestes in *Infinium*, till there be appearance given.

In case the defendant do appeare, then you may declare as in the form following.

The Declaration in Warrantia Carta.

Lincolne, ss.

EA. was summoned to answer H. B. Clarke, of a Plea that he warrant to him three messuages, &c. with the appurtenances in C. which he holdeth, and claimeth to hold of him, and whereupon he hath his deed, &c. and whereupon the said H. by I. W. his attorney, saith, That whereas a certaine fine was levied in the court of the Keepers, &c. here, that is to say, at *Westminster*, from the day of *St. Hillary* in fifteen daies (such a yeare before O. S. John and others, naming them) then Justices of the common Bench here, that is to say, at Westminster aforesaid, and other faithfull persons then being present between him the said H. B. Plaintiff, and the the aforesaid E. and one *Joane* then his wife, and R. H. deforcients of the said three messuages, &c. with the appurtenances, whereof the plea of covenant was summoned between them in the same court; that is to say, that the aforesaid E. I. and R. did acknowledg. the aforesaid tenements, with the appurtenances to be the right of him the said H. B. as those which the said H. B. had o' the gift of the aforesaid E. J. and R. and the same remised and quite claimed, from them the
O said

said E. I. and R. and their heires, to the aforesaid H. B. and his heires for ever, and moreover the said E. granted for himselfe and his heires, that they would warrant the aforesaid H. and his heires the aforesaid tenements, with the appurtenances against all men for ever. By virtue of which fine the said H. B. was seized of the tenements aforesaid with the appurtenances in his demesne as of Fee, and he the said H. B. so being thereof seized, one J. D. arrayed against him the said H. a certaine Assize of novell disseisin of the tenements aforesaid with the appurtenances, before P. W. one of the Justices of the Common Bench, and R. C. one other, &c. Justices assigned to take the assize in the countie of L. aforesaid, which said assize depending, he the said H. often required the aforesaid E. that he would warrant to him the tenements aforesaid with the appurtenances, yet the said E. hitherto hath denied to warrant to the said H. the tenements, aforesaid with the appurtenances, and yet doth deny. Whereupon he saith that he is dammified, and hath damage to the value of five hundred pounds, and thereupon he brings his suit, &c.

The defendant acknowledgeth the action.

AND the aforesaid E. by I. E. his attorney comes, &c. and saith, that he cannot deny the aforesaid action of the said H. neither but that the writing aforesaid is the deed of him the said E. nor but that he did give and grant by that writing to the said H. & his heires, the tenements aforesaid with the appurtenances, neither, but that he by that writing is held to warrant to the said H. the tenements aforesaid with the appurtenances, in the forme in which the said H. hath

hath above declared against him : therefore it is considered of, that the said E. shall warrant to the said H. the tenements aforesaid with the appurtenances for the place and time, and nothing of being in mercy of him the said H. because he came the first day by summons, &c.

Here you have a declaration and a judgment by confession.

NOte if a man recover his warranty in *Warrantia Charta*, and after he is impleaded in an action in which he cannot vouch, as by assise, or by *Scire facias* upon a fine, now it seemes that he ought to give notice to him against whom he had recovered his warranty of his action, and to pray him to shew what plea he will plead to defend the land.

NOte that a man may bring a writ of *Warrantia Charta* at the common law for warranty made of lands holden in ancient demesne.

*Having gon through Warrantia Charta,
We come now to Audita Querela.*

What the Writ is.

A*udita Querela* is a writ, and lyeth where one is bound in a statute Merchant, statute Staple or recognizance, or where judgment is given against him for Debr, and his body in execution thereupon, then if he have a release, or other matter sufficient to be discharged of execution, and hath no day

day in court there to plead it, then he shall have this writ against him that hath so recovered, or against his executors.

Against whom and for whom this Writ is brought.

THis writ lieth for the party himself against whom the Judgment is had, by whom the statute is made, or his heire, executor, or administrator, upon whome the charge is come or comming. Sometimes it is to be had against the Prosecutor himselfe, and sometimes against him and others that ought to bear a part of the burthen with him.

It lies against a Ter-tenant, without naming him Party or Privy.

Wheresoever this remedy is given, there must be these three things in the case.

1. There must be a charge or burthen come, or comming upon him that is to have it.
2. It must be such a charge, &c. as by law he ought to be discharged of, in part or in whole.
3. It is such a case as where he hath no other remedy for his reliefe.

These following cases will cleare these particulars

If a Judgment or judgments and execution be had against one, and the Plaintiff release him of the debt in fact, or that he be released of it all, or part of it in law, and yet he sueth out execution;

If a judgment be had against me and an other, and one of us be taken in execution, and after are released of the debt, or discharged of the execution by the Party himselfe, the other may take advantage of this.

If judgment be against two trespassors, and one taken, and the damages satisfied by him.

The like case if a judgment be against two or more, upon one bond, and execution is done upon, and satisfaction made by one of them.

If Executors sue for, and recover a debt, and after the testament is revoked, in this case, the Party that hath paid the money, may get the same certified by the Bishop, and then he shall have his remedy against the executors.

If the Conusor after execution tender the money due upon the statute to the conusee, and he refuse it, or if part of it were paid at the day, and he tender the rest in Court, and yet the Conusee go on to extend it in these Cases the Party grieved may have this remedy.

If the statute were delivered to a stranger to keep till certaine conditions were performed, and he doth deliver it to the Conusee, or he doth get it by fraud from him, before the conditions be performed, in this case he shall be relived by this writ.

If an infant enter into a statute, he may avoid it whilst he is in his *Minority*, by this writ, & the course is this: In case he be in prison, this writ may be sued out by some of his friends to the Justices who thereupon command the sheriff to bring the infant into court to be seen; and if the Judges judge him to be within age, after processe sent to the Conusee, they will discharge him. But if one that hath been an infant, be sued upon it, after he is of full age, this writ doth not lie for him,

If divers be bound by one specialty [Conjunction and divisim] and the obligee get judgment and execution against one of them, and after sue the specialty against the other. he shall not have this writ for his reliefe but may plead the former execution.

If in the interim betwixt verdict and Judgement, the parties have put themselves into arbitrement for the suite, or the defendant get a release from the Pla. and yet the plaintiff doth proceed, the Defendant may have this action; but where these cases are put its to be conceived before the writ brought, that judgment is given.

Where a man sues for a thing for which he had formerly judgment and execution, there this Writ lies not, for it is pleadable.

Where a man and his heirs are bound by any bond or bill, &c. and the obligee sue it, and recover against the heire, and after sue the executors for the same cause; or on the other side after recovery had against the executors, he sue the heires, here the heire or executor so sued may have this remedy for that he cannot plead it in bar.

Where a lessee covenants for him and his assignes to repaire houses, or to do any other thing chargeable upon him after assignement of his estate, and he assign his estate and after the lessor, who may sue either of them, sue and recover against one of them; in this case, if after he sue the other for the same cause, he may have this remedy.

The Proceedings in this action are as follow.

Where before execution this writ is brought by the Party grieved himselfe, or by his heires, or executors, he surmising good cause of this writ, must give good Baile to prosecute, and stand to the judgment of the Court, upon which he may have a *Superfedaes*, to stay execution; but when the Party is in Prison, then it seemes there is no baile put in, till the conusee or obligee answer in the *Audita querela*. Note, the processe before execution are *Venire facias*, *Distingas*, and if he come not to appeare upon the *distingas* then execution, unlesse the sheriff retorne a *Nihil Habet*

Habet upon the *Venire*, if so, then shall issue a *distingas Alias*, and, *plures*, and upon a *Nihil* returned on these proces then a *Capias* shall issue.

Note that after execution executed, no *Superseideas* doth lye, after execution a *Scire facias* doth issue, and this peremptory.

The Proesse before execution are a *Venire facias* and an *Alias*, &c. And then if he comes not in the use hath been that upon motion, the party in Prison may be discharged.

After those proesse a *distingas*, and upon default after appearance, and a Plea pleaded, a *Distingas ad audiendum iudicium*, for by such default judgement shall be given against him, and after execution, the Process is a *Scire facias*, when the party is in Prison upon a *Capias ad satisfaciendum*.

Where a man puts in baile in this action, he shall not be discharged of this baile, but must continue till the suite by *Audita Querela* be determined, for albeit the party do not prosecute after the appearance of the defendant, yet he must continue in prison, or stand upon his baile.

If a man be Non suited in one *Audita Querela*, yet he may have an other, but he shall have no *Superseideas* in the second, as he had in the first,

Audita querela upon the Statute of Usury.

IT was commanded the sheriff, &c. whereas our of the grievous complaint of T. B. of, &c. R. B. of, &c. And A. A. of, &c. It was shewed to the Keepers &c. Complayning, that whereas in the statute in the Parliamant held, &c. (reciting the statute of Usury) as by the said statute more fully appeareth. And whereas one N. W. such a day and yeare at C. did lend unto one R. B. ninzey pounds, for one yeare

then next following, and that in consideration thereof, it was then and there agreed, between him the said N. W. and the aforesaid R. B. that the said N. W. should have by way of gaine and profit for deferring and giving day of payment of the aforesaid ninety pounds, for the time aforesaid ten pounds. to be paid to the said N. W. together with the aforesaid ninety pounds, and also eightene yards of black Frizes, of the price of every yard sixteene pence, which said R. B. afterwards, that is to say, such a day and yeare at C. aforesaid, made his testament, and appointed and ordayned *Agnes*, the wife of the aforesaid A. A. and one T. Bartram, L. B. and I. B. his Children, executors of his testament aforesaid, and the same A. A. and one W. L. Gentelman, guardians of the aforesaid T. B. son and heire apparant of the said R. B. during the minority of the aforesaid T. B. and afterwards there dyed, after whose death, that is to say, (such a day & yeare, at C. aforesaid) it was agreed between him the said N. W. and the same A. A. and W. L. that the aforesaid N. W. should defer & give day of payment of the aforesaid 90^l. of the principall debt, and of the aforesaid ten pounds of the use aforesaid, from the end of the aforesaid yeare, for the payment thereof as aforesaid, before agreed, untill Wednesday next, after the Feast of Easter, then next following, and that the said A. A. and W. L. or one of them would pay to the said N. W. sixe pounds, thirteen shillings and foure pence for gaine and use, for deferring and giving day of payment of the same ninety pounds of principall Debt aforesaid, and ten pounds for the first use aforesaid, and also that A. A. and W. L. and the aforesaid T. B. and R. B. should by Recognizance acknowledged before R. M. then one of the Justices, &c. themselves to owe to the aforesaid N. W. four hundred pounds for the secure pay-
ment

ment of the aforesaid ninety pounds of principall debt aforesaid, and ten pounds for the first use aforesaid and also of the aforesaid six pounds thirteen shillings and four pence for the said second usury aforesayd, on the aforesaid Wednesday next, after the Feast of Easter, between the houres of one and foure in the Afternoone of the same day, which sayd severall summs in the whole, do amount unto one hundred sixe pounds thirteene shillings and foure pence, whereupon the sayd T. B. W. L. R. B. and A. A. (such a day and yeare aforesayd) at C. aforesayd, before the aforesaid R. M. did acknowledge themselves to owe to the aforesayd N. W. the aforesayd foure hundred pounds for the secure payment of the aforesaid one hundred and sixe pounds thirteen shillings and foure pence, on the aforesaid Wednesday next, after the aforesaid Feast of Easter, according to the Form, and Effect of the agreemēt aforesayd, and so that Recognizance in Forme aforesaid acknowledged, for the payment of the sayd ninety pounds, of principall Debt aforesaid, and of the aforesaid sixteen pounds, thirteen shillings and four pence for the use aforesaid exceeding the Rates of ten pounds for a hundred pounds by the yeare, by vertue of the Statute aforesaid published in the Parliament holden, &c. is void in the law; as the said T. B. R. B. and A. A. by wayes and meanes convenient, are ready to make appeare. Notwithstanding which the aforesaid N. W. now lately hath unjustly prosecuted execution of the aforesaid foure hundred pounds, by reason of the Recognizance aforesaid in form aforesaid acknowledged against them the said T. B. R. B. and A. A. to the great damage and grievance of them the said T. B. R. B. and A. A. whereupon the said T. B. R. B. and A. A. to the Keepers, &c. have supplicated to provide for them a fit remedy in this behalfe: the said

Keepers

Keepers, being willing to doe herein that which is just, and to exhibit full and speedy justice therein to the said T. B. R. B. and A. A. hath commanded the Justices here that hearing the complaint of them the said T. B. R. B. and A. A. and calling before them the parties aforesaid in this behalf to be called, and hearing their reasons thereof, they cause due and speedy accomplishment of Justice to be done to them the said T. B. R. B. and A. A. as of right, and according to law and Custome of the Commonwealth of *England*, ought to be done, and to that purpose, that they should cause to come here at this day, that is to say, (such a returne) the aforesaid N. W. to answer in and upon the Premises, and further to do that which the Justices here shall think convenient and consider of and now here at this day (naming the returne) came aswell the aforesaid T. B. R. B. and A. A. by *W. B.* their attorney, as the aforesaid N. W. by *L. C.* his attorney, and hereupon the said T. B. R. B. and A. A. say that the aforesaid N. W. (such a day and yeare) lent unto one R. B. ninty pounds for one yeare then next following, and that in consideration thereof, it was then and there agreed betweene him the said N. W. and the aforesaid T. that the said N. W. should have in gaine and profit &c. and so goe on as before in the writ, untill you come to void in the law. And this he is ready to aver whereupon he praies judgment, and that the aforesaid N. W. may be barred from having his execution aforesaid, by vertue of the Recognizance and Judgment thereupon in Court here had and that the said T. B. and A. B. may be discahrged thereof, &c.

And hereupon the said N. W. prayeth liberty to plead, &c.

NOte that if a man enter into a statute or Recognizance, which either is defective in it selfe, or is voidable by some law, or becaule the contract is usurious, as in the declaration before specified; or that there be a defeazance upon it, which is kept from the conusor, or that the statute is delivered up by the conusee (which is, a release in law) and the conusee get it againe, & the Conusee doth go on in the execution of it. In all these cases the party grieved may have this remedy and Writ for his reliefe.

If the statute were made through hard imprisonment of the conusor, he may have this writ, &c.

NOte I. W. brought an *Audita Querela*, upon the statute of Usury to be relieved in making void a judgement given upon a bond where he hath pleaded that it was not his deed, and it was disallowed & judgment thereupon as followeth.

AND hereupon the Premises being seen, and by the Justices here more fully understood in seemed to the same Justices here that the aforesaid writ of hearing the complaint, & the matter in the same contained, was insufficient in law to bar the said R. from having his execution aforesaid, by reason of the Recognizance aforesaid: Therefore it is considered of, that the aforesaid I. W. take nothing by his writ of hearing the complaint, that the aforesaid R. may prosecute for the execution, if, &c.

If a man sue an *Audita Querela* upon a release, and afterwards he is Non-suit, he shall nor have an *Audita Querela* upon new matter, and yet the law seemes contrary to this, where it sayes, he shall not delay execution upon a new *Audita Querela*.

If the conusor after execution tender the money due

due upon the Statute to the Conussee, and he refuse it, or if part of it were paid at a day, and he tender the rest in court, and yet the conussee goe on to extend it, in these cases the party grieved may have this remedy.

The proecesse as we told you in *Audita Querela*, were *Venire facias*, *Distingas*, *Alias*, and *Plures*, *Distingas*; only take this further, that if the Sheriff retorne that he hath nothing, &c. Or * that he cannot be found, &c. Then he shall have a *Capias* against the defendant, * *This Capias* cannot be found, &c. Then he shall have a *Capias* against the defendant, so be understood where the Sheriff retorne a *Nichil* upon the *Distingas*, *Alias* and *Plures*.

Curia Claudenda. This is a writ which lies at Common law, and is for reparation of Fences Hedges, Mounds, &c.

f. N.B. 127.b **T**His writ lies where a man ought to inclose * his Soile or land from his neighbours, and will not do this, then he may have this writ, and it may be sued before the Sheriff in this county Court, or in the Court or in the common Bench. If the writ be before the Sheriff, then it runs thus.

THe Keepers, &c. To the Sheriff, &c. Do justice to A. that justly, &c. he close his Feild in N. which is open to the nocument of the Free-hold of B. in the same Towne, or in another Village, which he ought

ought, and was wont to inclose, as the said B. says, and as he is reasonably able to shew that he ought to inclose it, &c.

If in the Common Bench, then the Writ is thus.

THe Keepers, &c. Command A. that justly, &c. he close his Feild in N. which is open to the Nocument of the Free-hold of B. in N. aforesaid, which he ought, and was wont to inclose, and unlesse, &c.

This Writ may be removed out of the Countrey, at the Suit of the Plaintiff, without cause.

But if the Defendant will remove it, he ought to shew cause in the Writ.

And in the Writ to remove it by the Defendant, shall be this clause, (Let Execution of this Writ be made, &c. if the cause be true, otherwise not.)

This Writ lyes not, unlesse against him who hath the Close next adjoyning unto the Land of the Plaintiff, and lyes not, unlesse for him who hath an estate of Free-hold in the Land, for Tenant for Terme of years shall not have this Writ. *F. N. B. 128.*

If a man have a Common in a great waste, to him and his Heirs, or for Term of life, and he who hath the Land adjoyning to this waste, who ought to inclose betwixt the waste and his Land, will not make his Inclosure, yet the Commoner shall not have this Action for the Damage which he hath sustained, &c. Although the Commoner may distraine the Beasts, Damage-seasant to the Land, which is his Common. For the Writ supposes to the Nocument of the Free-hold of the Plaintiff, which proveth that the Plaintiff ought to have the Land adjoyning, if he will have this Action *Vide F. N. B. 127, 128.*

The Proceſſe in this Action is Summons, Attachment, and Distresse, &c.

The view lyes in this Writ.

If

If the Defendant appeare, and afterwards make default, he shall have a *Disfringas* in lieu of a *Petite cape*, &c. and if he make default at the day of the Returne of this Writ, he shall have a Writ to inquire of damages, and also a Writ to distraine to the Reparations.

If the party appear, and that you come to declare, take these observations.

IN your Declaration you ought to shew the certainty of the Land which the Plaintiff hath there adjoining unto the Defendants Land, and the certainty of the Land which the Defendant hath there adjoining, who ought to inclose, and then you ought to alledge prescription to inclose.

Parco Fracto, or breaking the Pound. comes next to be handled.

THIS Writ lyes, where a man distrains the Beasts of another man doing hurt in his Land, or for rent or services behind, and sends them into the common Pound, or into any other Pound or place, which may be called a lawfull Pound, and he which hath the property of the Beasts, or another person take the Beasts out of the Pound, and driveth them to a place where he pleaseth; In this case, he that distrains for Damage done unto him, or for Rent or Services behind, may have this Writ; wherein he shall have Judgement to recover Damages for it, and to distrain the Cattell againe wheresoever he shall find them.
F. N. B. 100.

For this cause also is the party offending punishable in a Court Lect,

If a man command his Servant to distrain for rent or services arrear, and the Servant distrain the beasts, and put them in pound, &c. and a stranger take them out of the pound; in this case the Master, and not the servant shall have an Action of *Parcio fracta*, for it is the pound of the Master. *F. N. B. 100.*

If a man distrain for Rent or Services, or for Damage-feasant, and put the Beasts in the Soile, or in the Close of his freind by his License, and he which owes the Beasts, takes them out of the Close; here he which distrains shall have this Action, and not he who owed the Close, for he which owed the Close may have his Action, Wherefore he brake his Close, &c. For it is not his pound, but the pound of him that distraineth, &c. The form of the Writ is thus.

TH E Keepers, &c. To the Sheriff of *Lincoln*, greeting, If *A. &c.* Then put, &c. *B.* to shew, wherefore whereas he the said *A.* in his Damage at *N.* certain Cattell, or so the Cattell of the aforesaid *B.* had took, and them according to the Law and Custome of the Common-wealth of *England*; had there impounded: The same *B.* the aforesaid pound by force and armes brake, and the Cattell aforesaid he took and led away, and other harms to him he did, to the great Damage, &c.

Note here this Writ is by force and armes, and it is not put in the Writ what manner of Beasts they were, nor what number, nor to whom the property of the Beasts are, unlesse at the pleasure of the Plaintiff.

Where a man commands his servant to distrain for Rent or Services, or for Damage-feasant, then the Writ is thus.

TO shew wherefore whereas he the said *A.* in his damage of *N.* by *B.* his Servant, hath caused a certaine Bull, or certaine Cartell to be taken, and the same *B.* the said Bull or Cartell, according to the Law and Custome of the Common Wealth of *England* had there Impounded: the aforesaid *C.* that Pound by force and armes did break, &c.

Where a man distrains for an Amerciament in a Hundred, and impounds the Beasts, and the other party takes them out, the Writ shall be thus.

WHereas the said *A.* by *B.* and *C.* his Bayliff of the Hundred of *N.* certaine young Cattell of him the said *F.* at *S.* within the Precinct of the Hundred aforesaid, for a certain Amerciament, to which he the said *F.* was amerced in the same Hundred, to the use of the aforesaid *A.* to be levyed, had caused to be taken, and the same *B.* and *C.* the same young Cattell, &c.

Here in this Writ it ought to be shewed, that the property of the Beasts were in him who was amerced, for that, that he cannot distrain a Strangers Cattell for this Amerciament.

But for Rent or Services arreare, it is otherwise, for there the Party to whom those Rents or Services were arrear, may distrain what Cattell he finds upon the ground, levant and couchant.

This Writ lyes, albeit the impounding be unlawfull, as where the Parry that is distrained for Damage-feasant, do offer sufficient amends after the taking, and before the impounding, and the Party so distraining doth refuse it.

The like case of one that hath a Replevin, or other coloured Authority (not good in Law) by vertue whereof he gets out the Cattell.

Where

Where a man hath a good Authority, and breaks the Pound before he demand the Cattell of the Keepers of the Pound, and he do interrupt him in the taking of them; in all these Cases the Party greived may have this Writ for his remedy.

The Processles in this Action after the Summons; are Attachment, and Distresse infinite:

Rescues we come now to treat of, and the rather for that it hath some relation to what we spake formerly of.

THE word Rescues is two wayes applyable, either to persons or things.

To persons, and that is, when a man is arrested, and he himselfe, or another in his behalfe, doth rescue him.

The other relates to things, and of that we now treat, as having affinity to that of [*Parco Fratto*] immediately before spoken of, F. N. B. 100.

This is a Writ lying, where one, or his Servant doth distraine for Rent services, or Damage-feasant, or for any other cause; and being about to impound the Distresse, another taketh it away from him, and will not suffer him to impound it; in this case the Party hurt or greived may have this Writ for his relief against him that made the rescue, and shall recover Damages for it.

Where a man distrains Cattell, and in driving them to the Pound, they get into the Owners house, and he doth with-hold them from the distraining, and he will not suffer him to drive them to the Pound, this is a Rescous for which this Action lyes.

If a man be comming to distraine, and the Owner drive away the Cattell, and he that is about to distrain

strain doth follow them upon a fresh pursuit, and the Party will not let him have them, but drive them away, in this case he may have this Writ as his remedy.

But if before one be come in sight, the Owner drive out the Cattell, or they go out themselves, so that he misseeth of that Distresse he intended, this VVrit will not lye for this.

If the Lord distraine his Tenant without cause, and unjustly, and it be rescued, it seems this Action doth lye.

Note that if any other but the Lord do distrain upon his Tenant without cause, or out of time and place, in any of the Cases before recited, this Action will not lye.

The Processees in this Action are as followes.

The first is a Summons, and then Attachment, and Distringas, and then Alias and Plures Distringas.

The Writ of Summons is thus.

THe Keepers, &c. To the Sheriff of L. &c. If A. shall cause the, &c. Then put, &c. To shew wherefore, whereas he the said A, in his damage at S. certaine Cattell (or thus) the Cattell of the aforesaid B. he took, and them according to the Law and Custome of the Common-wealth of England, would have there impounded, the aforesaid B. the aforesaid Cattell by force and armes he did rescue, &c. And other harmes, &c.

If for Services due, as followes.

THe Keepers, &c. to the Sheriff, &c. if A. shall cause thee, then put, &c. to shew wherefore whereas he the said A. in his Fee at S. for Customes and Services to him due by C. his Servant, certaine Cattell, he caused to be taken, and them according to the Law and Custome of the Common-wealth of England, &c.

Note where a man distrains Beasts, and dead chattels, there the Writ is thus.

To shew wherefore, whereas he the said A. in his Fee at S. for Customes and Services to him due, the Cattell and Chattels of him the said B. he took, and those Cattell he would have impounded, and the aforesaid Chattels in the name of, Distresse, according to the Law and Custome of the Common-wealth of England, he would have detained, he the said B. the same Cattell did Rescue, and the Chattels aforesaid from him the said A. he took, and other Harmes, &c.

If the party appeare not upon the Summons, then as before you are to proceed to Attachment and Distresse infinite.

In case he appeare, you may declare as followes,

To the B.

WC. lately of B. in the County of E. Yeoman, and W.B. lately of B. in the County aforesaid, were attached to answer I. C. Knight, of a Plea, that whereas he the said I. in his Fee at B. for Customes and Services to him due, by N. T. his Servant, had caused to be taken certaine cattell, and the same cattell, according to the Law and custom of the Common-wealth of England, would have impounded there the said W. and W. the same cattell by force and armes did rescue, and other Enormities to him they offered,

offered, to the great damage of him the said I: and against the publick peace, &c. And whereupon the said I. by I W. his Attorney, complains that whereas he (such a day and yeare) in his Fee at B. that is to say, in one hundred Acres of Land, called W. parcell of the Mannor of B. with the Appurtenances in the County aforesaid, which T. B. then held of him the said I as of his Mannor of B. in the County aforesaid, by Homage, Fealty, and unto Escuage of our Lord the King, of forty shillings, when it shall happen two shillings, and unto more more, &c. And unto lesse lesse, &c. and by the Rent of five and twenty shillings, each yeare, at the Feast of Saint *Michael* the Arch-Angell to be paid, as also by the service of doing suit to his Court of Wapentage of H. in the County aforesaid, from three weeks to three weeks, at the Wapentage aforesaid to be held, and by the Sheriff-gild of five shillings every year at the same Feast of Saint *Michael* the Arch-Angell yearly to be paid, of which said Services the said I. was seised by the hands of the aforesaid T. as by the hands of the true Tenant, That is to say of the Homage, Fealty, and Suit of Court aforesaid, as of his Fee and Right, and of the Escuage and Rent aforesaid in his demesne as of Fee, and being so seised by the aforesaid N. T. his Servant, did cause to be taken certaine Cartell, that is to say, two Cowes feeding upon the aforesaid hundred Acres of Land for the Rent, Customes and Services, to him due and unperformed, that is to say, for the Homage, and Fealty, and for the Rent, of five and twenty shillings, for one whole yeare, ended at the Feast of Saint *Michael* the Arch-Angell (such a yeare) being in arreare, as also for the Suit of the aforesaid Court of *Wapentage*, held at H. aforesaid (such a day and yeare) undone, and the same N. the same Cartell according to the Law
and

and the custome of the common wealth of England there would have impounded, they the said W. and W. theafore said cattle, the day and yeare aforesaid, at E. aforesaid by force and armes, that is to say, with Swords, Staves and Knives, they did rescue, and other harmes, &c. and against the Peace, &c. Whereupon he saith that he is worsted, and hath damages to the value of forty pounds, and thereupon he brings his Suite, &c.

ANd the aforesaid w. and w. by H. D. his attorney comes and defends the force and injury, when, &c. and the aforesaid w. saies that he is in no wise guilty of the trespassse & rescue aforesaid, as the aforesaid I. C. hath above declared against him, and of this he puts himselfe upon the country, and the aforesaid I. C. in like manner, and the said W. B. as to the comming by force and armes, saies that he is no wise guilty, and upon this he puts himselfe upon the Country, and the aforesaid I. C. in like manner. And as to the residue of the trespassse, and rescue aforesaid above supposed to be done, the said W. B. saies that the aforesaid I. C. ought not to have against him his aforesaid action, because he saith that the aforesaid T. B. held not of the foresaid I. C. the aforesaid hundred acres of lands as of his Mannor of B. aforesaid by the services aforesaid; as the aforesaid I. C. By his declaration aforesaid hath above supposed, and of this he puts himselfe upon the country, and the aforesaid I. C. in like manner, therefore as well to the trying this issue, as issues above joyned, command is given to the sheriff that he cause to come here 15. daies after *Easter* 12. &c. by whom, &c. And who neither, &c. to recognize, &c. Because as well, &c.

Here you have a declaration against two and the one pleaded generally not guilty, the other not guilty as to force and armes, and as to the residue he pleads *Non Tenure*, upon which you have an issue joyned in the cause, where if you were to descend to tryall in any of the like nature, your course of proceeding must be as is formerly directed in other actions.

In this action you recover damages and costs only.

Affize coms now to be treated of, an action which formerly was much in use, and although for the present not so much in practice, yet to preserve the knowledge of it, we shall here discover somewhat of the nature of the action, together with the proceedings thereupon.

The Process is attachment against the party, Summons, *Habeas Corpora* and *distringas*. vi. 3. 106.

Affises were *Temp. Dou. &c.* but the Novell disceisin was since the conquest. 2. *Inst.* 25.

Before the statute of *Magna Carta*, Affizes were retorneable either *coram Rege*, or in the court of common Bench.

The defendant shall not be essoyned he shall not cast a prohibition, he shall not pray in aid unlesse of the King:

He shall not vouch any *Distringas*, or any party to the rent unlesse he enter into wa. ranty presently.

The same law. § *Relceit*

The

The Parroll that shall not demur for Infaney.

ASSISE is a writ, and it lyeth Where a man is put out of his Lands, Tenements or of any profits, to be taken in a certaine place, as of an office, &c. and so disseised of the Free-hold, (which free-hold to any man is where he is seised of lands or Tenements, or profits to be taken in Fee-simple, Fee-taile for terme of his owne Life, or for term of an other mans life) but tenant by *Elegit*, tenant by statute Merchant. Tenant by statute staple, may have assize although they have not Free-hold, and this directed by divers statutes.

IN an Assize it is allwaies needfull that there be a Disseisor and a tenant, or otherwise the writ shall abate.

Also where a man is disseised, an recovereth by an Assize of Novell disseisin, and afterwards is again disseised by the same disseisor, he shall have against him a writ of Re-disseisin directed to the sheriff to make inquisition, and if the Redisseisin be found, he shall be sent to prison: also if one recover by an assize of Mortuancester, or by other jury, or by default, or by reddicion, and if he be another time disseised, then he shall have a writ, *De post disseisin*, and he which is taken and imprisond for redisseisin, shall not be delivered without speciall commandment of the King, see the statute thereof, *Merton*, Chapter the 3. *Marlebridge*, Chapter the 8, and *Westminster*, 2. Chapter the 26.

There is also an other Assize called an assize of Fresh Force, and lyeth where a man is disseised of Tenements, which are devisable as in the City of *London*, or other Burroughs or townes that be Franchises, then the Plaintiff shall come into the court of

the said towne and enter his playnt, and shall have a writ directed to the Mayor or bayliffs, and thereupon shall passe a jury in manner of assize of Novell disseisin; but it behooveth that he do enter his Plaint within forty daies, as it is said, or otherwise he shall be sent to the common law, and if the Officers delay the Execution then the Plaintiff shall have another writ to have execution, and a *Sicut alias*, and a *Plures*.

This assize brancheth it self further into an, i. assize of *Darrein presentment*, of which we have before spoken of.

2 Assize de *Mordancester*.

An Assize of *Mordancester* shall be brought in like manner as an assize of Novell disseisin shall be, and in assize of Novell disseisin before the Justices of the common Bench, or of the upper Bench, a certaine day shall be put in there, as unto Thursday after fifteen dayes after *Easter*, &c. But in an assize of *Mordancester*, a common day shall be given, and fifteen daies, &c. or in eight daies, &c.

vid. F. M. B. IN an assize of Novell disseisin in the Common Bench, or in the Upper Bench the justices may give a day out of terme, so unto Thursday next after such a feast, &c. for that an assize hath any day of a day of return in the terme, but a certaine day which the justices will give him, and this may be as well out of the term as in the term, and that by the statute of *Articuli super Chartas*, which directs that in every writ of summons, and attachment, there ought to be fifteen daies between the date and the returne of it: But in an assize of novell disseisin the common bench or in the Upper bench there, there need not to be had fiftene daies betweene the

the date, and the returne of it, as it seemes by the statute.

In an assize of Novell disseisin sued before justices in Eyre, or before the Justices of the Upper bench or of the common bench, the Plaintiff needs not to have any Patent, to the justicee, for they have authority without Patent, and so have the Justices of assize authority to take assize of Novell disseisin without any Patent made unto them, and that by the statute of *Westminster* 2. Chap. the 13.

If the assize be brought in the Upper bench, or in the common bench, then the Writ runs thus.

THE Keepers, &c. To the Sheriff, &c. complaint is made to us by A. that B. unjustly and without Judgment hath disseized him of his Free-hold in C. after, &c. And therefore we command thee, that if the said A. shall secure thee of Prosecuting his complaint, then thou causest that tenement to be resealed of the cartell, which in it were taken that the tenement with the cartell to be in peace untill Saturday, in eight daies after St. Michael, or unto Saturday next after the morrow of all Soules next coming, &c. And in the meane time then cause twelve Free and lawfull men of that Visnage to see that tenement, and imbreivate their names, and so Summon them by good Summoners, that they be before us at *Westminster* (if in the upper Bench) or before our Justices at *Westminster* (if in the Common bench) at the aforesaid time ready to make recognition; and put by Sureties and Sure Pledges, the aforesaid B. or his baile, if he cannot be found, that he be there to hear that Recognition; and that thou have there the summoner, the names of the Pledges and this writ.

If

If the writ be brought before the Justices of assize then the alteration is thus.

The writ is all one with the Former, till after the word (Peace) and then you say untill the next assizes, When our justices shall come into those parts.

If the writ of assize be brought before other justices then the justices of assize in the same county, then the writ is as above, untill you come to the word (Peace) and then you say untill a certaine day, which our beloved and faithfull R. and F. shall make knowne unto you, &c. And in the meane time, &c. That you summon them before the aforesaid R. F. and those whom we have associated unto them, at a certaine Place which the said R. and F. shall make known unto thee, ready thereupon to make recognition, &c. And put, &c.

Upon this writ there ought to be a speciall Patent directed to the same justices, for that they are not justices of assize for that county.

If a man have rent-servis rent-charge or a rent-seek, issuing out of land for terme of Life, or in Fee-taile, or Fee-simple, if he be disseised of this rent, he shall have a writ of assize of this rent, and the writ shall be generall. That unjustly, &c. he did disseize him of his Free-hlod in N. and he shall make his title to the rent, &c. when he declares, &c.

A man may have an assize of divers rents, or of Land & rent and Offices, and Profits, to be taken in a mans soile, and all in one writ.

If a man have any Profit granred unto him out of any lands for terme of life, or in Fee, as to have the Fruits whether Apples, Peares, Nuts, or Achrons, or other Profits whatsoever, he may have an assize of them, if he be deforced of them.

So likewise of a tole of a Marker, of a Passage or Ferry

Ferry of Pontage or Pannage, and other like things he may have this writ of Assize.

What seisin is sufficient to have an Assize

SEIZEN of parcell of the Rent is sufficient to have Assize of all the rent.

The Provost or warden of a Colledge shall have an assize for rent, where his predecessor was seised, and not he himselfe; for the Seizin of the predecessors is the seizen of the house. The same case of the wardens of an Hospitall.

If a man which hath a title to enter, set his foot upon the land, and is outed, that is a sufficient seizin to have an assize.

If one put in his beasts to use my common by my commandement, this is a sufficient Seizen for me to have an assize.

Using of common by tenant at will is sufficient seizin for him in the reversion to have an assize of common, if he or his tenant at will be disturbed.

Reversion was granted to J. S. & the tenant for life attornes and dies, and I. S. enters by the windowes (for that he cannot enter by the door) when one halfe of his body was in, he was pulled out, and yet that is a sufficient seizen to have an assize.

The processe in this action are Summons, attachment, and distresse.

Where you are to declare, you may in case it be for Common of Pasture, make the insuing your president.

West.

Westmerland.

THe assize comes to recognize, whethet T. W. Knight, unjustly and without judgment, have disseised Henry Earle of Cumberland of his common of pasture in R. which pertained to his Free-hold in R. witihin thirty years now last past, &c. And whereupon the said Earle by H. D. his attorney complains, that the aforesaid T. W. hath disseised him of his common of Pasture, to wit, for comming every yeare all times of the year, in five hundred acres of Pasture with the appurtenances in R. aforesaid, with all horses, Oxen, Cows, Sheep, and Swine, and other cattle in his Mannor of R. in the county of W. levant and couchant, which pertain to his Free-hold in R. that is to say, to his Mannor aforesaid.

And for the title of the common Pasture aforesaid and the assize aforesaid thereupon to be had, the said Earle saith, that one H. lately Earle of Cumberland, and Father of him the said now Earle, whose heire he is, was seized of the Mannor aforesaid with the appurtenances in his Demesne as of Fee, and that he the said late Earle, and all they whose estate the said late Earle in that Mannor with the appurtenances had for the time, whereof the contrary is not extant to the memory of man, have had and have been accustomed to use, and have for themselves, and their tenants for terme of life, yeares or at will, of their Mannor aforesaid, and of every parcell thereof common of pasture, with all & all manner of cattle aforesaid in the Mannor aforesaid, Levant and couchant every yeare, all times of the yeare, on the aforesaid 500. acres of pasture, as unto the M. aforesaid appertaining

And he the said late Earle of the Mannor aforesaid
with

with the appurtenances, being so seised of such his estate, he dyed thereof seised, after whose death the mannor aforesaid with the appurtenances, did descend to him the said now Earle as to the son and heire of the said late Earle, by which he the said now Earle into the mannor aforesaid with the appurtenances did enter, and was, and yet is thereof seised in his demesne as of Fee, and being so thereof seised, he the said now Earl before the day of the issuing forth of the Originall writ of assize aforesaid put his cattle, that is to say 2 oxen & 2 horses, into the aforesaid mannor, levant, and couchant, on the aforesaid 5 hundred acres of pasture to feed upon the grasse there then growing using thereby his common aforesaid, and the said cattel were eating the grasse there then growing, until the aforesaid T. W. before the day of the issuing forth of the aforesaid writ, him the said now Earl of his common of pasture aforesaid, unjustly and without judgement he did disseize, as he above against him hath complained: And this he is able to aver, and thereupon he demands the assize.

And the aforesaid T. W. by I. P. his attorney comes and saies that he hath don no injury or disseizin to the aforesaid now Earle, of the common of Pasture aforesaid in the aforesaid five hundred acres of Pasture in view, &c. put and in the plaint aforesaid specified; and upon this he puts himselfe upon the assize, and the said now Earle in like manner: Therefore the Assize is to be taken thereupon between them.

There are severall Pleas specially to be pleaded in this action, both in bar and abatement, which arise according to the title of the defendants part.

A lease for yeares, or for life, the reversion to the Plaintiff or a Feofment of the plaintiffs, with warranty, and rely upon the warranty, is a good Barr.

The tenant may plead, that partition was made
between

between the plaintiff and I. S. whose estate he hath and it is a good barr.

If the plaintiff choose one to be his *vide Kiebing* tenant of all where he is not, the *Eng. 122. 123.* writ shall abate.

An assize is brought of tenements in D. and S. the tenant saies, that all is in S. that being so, the writ shall abate, for he cannot abridg the whole Towne, but see now by the statute of 23. Henry the eight, chapter the third, where he may abridg.

The bayliff may plead *Non tenure*, or misnaming of the Plaintiff, but not of his master, & conclude it, &c.

The Bayliff may plead that the tenements are in another town, for that is an abatement.

The bayliff may plead misnaming and Joyntenancy without deed.

A bayliff may plead not attached by fifteen daies.

After adjournement upon the Plea of the bayliff, the Tenant may Plead matter which consis of latter time

The Tenant himsele, after the assize awarded, may leave his bar, and plead the gene all issue, but he cannot plead a new bar after issue

If a plea be pleaded, and the Justices die, all shall be pleaded a new, but if they be at issue that shal stand

Where they are adjoyned upon a plea in abatement and after the writ is awarded good, he may afterwards plead in barr.

Thus much may suffice to have spoken of assize.

Wee should now come to treat of divers other actions, as *Contribuione facienda*, *Quid Jwis clamat*, *Per que servitia*, *Et per quam reddit*; and divers others of those natures, and finding them to be very absolete and out of use, and that the law hath provided remedies by the foregoing actions in most of those cases, and that the proceedings thereupon (chiefly for the trying

trying of titles) are far more expeditious, and more certaine, and with lesse trouble and danger to the clyent; I think it will not be time ill spent to insert some briete rules, both in *Ejectione firme*, and some other actions before spoken of, which were then omitted and hope though they come not in the direct places of those titles, will be very usefull for the attorney.

These proceedings are referred to the title foregoing of this Subject, fol. 199.

OF the Proceſſe in this action we have before ſpo-
ken, and of the pleadings and proceedings upon
it, but becauſe many of them miſcarry, by reaſon that
the proceedings before proceſſe, relating to the leſ-
ſors entry, the making of the leaſe, the entry of the
Leſſee, by vertue of the leaſe, the Ejectors entry up-
on him, and his Ouſter and ejectionment, where care is
not taken, and they be not circumſpect to prevent a
defect in any of theſe, it cauſeth much danger and
Prejudice of the Client, and cauſeth no little diſgrace
to the attorney. In this action alſo very uſeſull we
ſhall ſpeak to theſe things in order,

- 1 The entry of the Leſſor that hath the right.
- 2 The leaſe made by him for tryall of the title.
- 3 The entry of the leſſee, by vertue of a leaſe ſo made.
- 4 The entry upon him, and his Ouſter and Ejectionment.

Firſt it is to be conſidered what right and title the
leſſor hath to enter, whether he hath any right or
title to the lands or no; for if the right and title ap-
peare on the defendants part, the plaintiffs action
will fail.

Now

Now a man may have a Right or Title to that land whereof he hath no possession or property ; as where land is taken from a man wrongfully by Disseisin, in this case the chalenge and claim of him from whom it is taken, is called a Right. There is a Right of Action, which is, where there is no remedy left, but an Action to recover the land ; and there is a Right of Entry, when the party claiming, may for his relief, either enter into the land, or have an action to recover it.

There is a Title of Entry, which is, where no wrong is done, and yet one who hath a lawfull course to enter upon the land which another hath, but hath no Action to recover it ; as where Entry is given to a man for a Condition broken upon an Escheat, the Tenant dying without heir.

In all which cases, he must make his Entry before he can bring his Action.

1. The Property and Title of land is made, and may be gained severall wayes :

Either by Entry, as in case of occupation, where land is granted to *I. S.* for another mans life, and *I. S.* die ; in this case, he that first gets into possession shall have the Estate.

2. By Discent, where one hath land of inheritance, and dieth, not disposing of it.

3. By Escheat, where the owner dieth seised without any heir, which may be, in case he have onely a bastard ; or, because he is attainted of Treason ; or Felony.

4 By Conveyance, and so the property of land is transferred, and so it is passed : en manner of wayes, as follow :

Fine, Recovery, Feoffment, Grant, Lease, Bargain and Sale, Exchange, Surrender, Release, Confirmation.

A man

A man may have property in land also by an Execution, as by *Elegit*, or *Extent*.

If he ever had a Right of Entry into the land, it must be considered whether it doth continue and be not taken away; for one may have a Right of Action, and no right of Entry to recover his land; and he that will maintain this Action, must make himself a Title under the Lessor, that had a right of Entry into the land when he made the Lease; for he that makes the Lease, must have power and right of Entry, at the time of the Lease made, otherwise, neither the Entry nor the Lease will be good.

Now, that the Entry may be good and warrantable by the Lessor; for otherwise the Action is not maintainable; take these Rules following:

1. This Entry is to be made by the party that hath right.
2. It is a purposed going into, or setting his foot upon the land, as upon his own land.
3. This may be done by the party himself that hath right to enter, or by his Attorney, by a Warrant from him, or by any other to his use; and if it be done by Attorney, he must have a good authority, and see he do duly pursue it.

Note, that one joynt-tenant, tenant in common, or copartner, having right to enter, may, if he will, enter for all the rest.

If such a person enter generally, or for, or in the name of himself and the rest; and the rest do not afterwards disagree to it, this is a good Entry for himself and the rest; and therefore if one have issue, a son and a daughter by one Venter, and a son by another, and being seised of Copy-hold land, devise all to the younger son, and die, and he enter into all; this Entry shall avail the eldest son, to put him in possession of the third part.

The Entry into one part, may be sufficient to gain the possession of the rest of the land.

The Entry into parts, must be in the name of all, &c.

If one restrain his one Entry, and make it speciall, and say, that it shall be to such an acre onely where he puts his foot; in this case it reduceth the possession of no more but that part, &c.

If a Lease be made to *A.* and delivered to *B.* to the use of *A.* and *B.* enter to the use of *A.* and after is outed, *A.* may have this action upon the Entry.

Having done with Entry, we come now to speak of Leases; for it is absolutely requisite for the maintaining of this action, that a good and warrantable Lease be shewed forth.

For the better enabling of you to make such Lease, take these Rules following:

1. The Lease to try the Title must be well made, sealed, and delivered, as other Leases, and Deeds are done; and for that, see the Book of Common Assurance, Chapter the fourth and fourteenth; A Book very usefull for many Conveyances, both in this and other kindes.

2. The Lease and Entry may be made by the party Lessor himself. if he be of full age, and not a Feme covert, or by his Attorney, by a Letter of Attorney, wherein the Lessor may seal and signe the Lease, and seal and deliver the Letter of Attorney at one and the same time, to some friend of his; and in this Letter of Attoeneey, he must recite the Lease, and give the Attorney power to enter into the land, and there to deliver the Lease of the Lessee as his Deed, and then the Attorney must do it in such sort, as the Lessor himself ought to do it; and he must not deliver it till he come to the land.

3. The Lease must be delivered upon the land; for
if

if the Lessor seal, and deliver the Lease before he hath made his Entry upon the land, it is void.

The husband and wife may make a Lease and a Letter of Attorney, to enter and deliver it upon the land, and this is good.

A woman covert, or an infant, cannot make a Letter of attorney, to seal a Lease, to try a Title, as a man of full age may do.

The husband alone may make a Lease of his wifes lands.

A Copy-holder may make a Lease to try the Title for a year without license.

A Tenant in common may make a Lease to try the Title for his part, &c. for a year, &c.

The usuall Tract that is used in sealing this Lease of Ejectment, is as follows.

Where a man hath a Title to an house, land, or both, and desires to gain the possession; it is usefull to make a Lease (to some friend who he is assured will not deceive his trust, but will surrender up the Lease, &c.) for two or three years, or more, for so long as he may be sure the time is not expired, before he gets his Triall and Judgement.

This Lease being made he goes with such his friend, the Lessee, to the Mannor, or chief House, or stands within the door, or to the land where no house is, where he seals, and delivers it to his friend, and taking the Ring, or any part of the door in his hand, delivers the Lease, mentioning the house and lands, with the appurtenances, which are contained in the Lease, to his said friend the Lessee.

This being done, and that you go away, whosoever after that staves in the house, or whosoever next enters into the house, whether Master, servant, or stranger, is an Ejector, and is proper to be made Defendant.

In case you find no Ejector, you may, if you so think fit, appoint one to that purpose.

Q²

The

The Lease being sealed, and delivered to your friend, as before, the party appointed to be the Ejector, may go into the house, and thereby you going away, he is become Ejector.

Where you thus appoint an Ejector, you must be sure to give notice to the tenant of the land, to defend the Title upon the Ejectors appearance.

Where the tenant of the land hath but a Lease, he must give notice to the Lord in whom the Fee-simple is, that he may be ready with his Evidences, &c. to defend the Title.

Note, that if you cannot come into the house, you may deliver the Lease upon the lands, in the name of the house and lands contained in the Lease; and he that comes next after your going away, upon the land, is an Ejector.

Where it cannot be proved that the Lessee after the Lease made, did enter and was possessed, this Action wil not be maintainable, and therefore we must now say something of the Entry of the Lessee.

1. He must make such an Entry as to gain the possession, for he cannot be ejected out of the possession of that wherein by law he was never in.

2. His possession must continue; for if upon sealing of the lease, and the delivery of it to the Lessee upon the Premises, the Lessor leave him upon the house or land, and that he be outed, or come away, &c. and another enter; whether it be a continuance of the same tenant in possession, or the entry of a stranger; here his possession is discontinued, and any of those parties are Ejectors. For the Ejectors, take this:

The entry of a man upon the land after the lease sealed, or the putting in the beast upon the land, in the like case is an Ejectment.

The continuance of the same tenant in possession, that was in at the time of the sealing of the Lease,

is

is an Ejection, and the Tenant an Ejector.

Where a Lease is made to try the Title, and the servants of the former possessor enter with their Masters Carts to do their utmost, and the Action is brought against the Master; it is maintainable without proof of the Masters commandment for this entry.

In some cases this Writ lies, and not in others.

It lies of a Mannor-house, land, meadow, pasture, tithes, or such like things

It lies of an Orchard; It lieth of a Kitchin; It lieth of a Chamber; It lieth also of a Coal-mine; It lieth also of a Bailery.

It lieth not upon a Lease of a stock of Cattel, nor upon a lease of a sum of money; nor of a water-course.

The Writ must set forth the certainty of the thing, both for quantity and quality; as so many Messuages, so many cottages, so many acres of land, so many acres of meadow, so many acres of pasture, &c.

Thus much for *Ejectione firme* before omitted.

In Actions of Account, take these Observations following.

NOW, where a Bailiff doth make a Deputy; yet the Writ must be against the Bailiff himself.

If a stranger take the profit of my wifes land, during Marriage, and I die, my Executor, and not my wife shall have this Action.

This Actions lies against the husband for the receipt of his wife; and against the wife and husband for the receipt of the wife, whilst she was sole.

It lies against a body politic, as against a single man.

It lies against the keepers of a Park, that hath the charge of Deer, as Bailiff of his Park, &c.

An Action of Account lies not in these cases following:

1. Where the party sued claimeth the thing to be his own use.

2. Where there is no privity between the parties, neither *Ex provisione Legis*, called privity in Law; as in the case of Guardian, nor in Deed by the consent of the party; as when goods are delivered to a stranger, and not to my use, nor to be delivered over to more, there is no agreement between the parties.

3. When he that hath delivered the things hath taken an Obligation for security of the things delivered.

4. Where the party that hath the things, hath a bare oversight of them; as a Bailiff of a Plough, and a Shepherd of Sheep, &c.

A Bailiff shall have allowance upon his Accounts, but a Receiver shall have none.

If the Bailiff disburse any thing for his Master belonging to his Office; as to pay his Quit rent, or the like; or if he be robbed, or suffer loss by other means, without any default in him, it shall be allowed him upon his account. But if he pay his Masters debts, or lay out any thing else, not appertaining to his Office, this will not be allowed him.

There are two Judgements upon this Writ; the first is, (*Quod computet*) which is interlocutory; the last is, *Quod querens recuperet versus defendentem*; so much as he is found in arrearages, and *Damna occasione interplacitationis*.

The first is to account onely, and upon this the Defendant may be outlawed, and then before Outlawry, if he appear and enter into account, and be found in arrearages, the Plaintiff shall have a definitive Judgement for the arrearages, and after the first Judgement no abatement can be for any cause, but a discontinuance, or a Non-suit may be.

The first Judgement is but an award of the Court, like

like to a Writ of Inquiry of damages, and not like to a finall Judgement, for there the action is clearly determined, and these two Judgements depend one upon another; for if Judgement be to account, and the Plaintiff die before he hath accounted, the Executor cannot go on in that suit, but he must begin again, and no Writ of error will be upon the first, till after the second Judgement.

We have now gone through the most generall and usefull practice of the Common Bench, relating to the severall Actions before going, as also of all Offices, and Officers incident to that Court, and now as before we promised, hereto is added a Table of the Fees of that Court, and of all Offices whatsoever relating to the Court, or the practice of it, belonging to every Office or Officer, which follow in order.

The Fees hereunder mentioned, are the Fees due, and paid to the Lord Chief Justice, and the other Justices of the Court of Common Pleas at Westminster, as they were due, and usually paid to the Justices of the same Court.

The Lord Chief Justice his Fees.

For allowance of a Writ of Errour *Writ of error.*
upon an Outlawry before Judgement. 20 s.

For a Bail taken upon an Outlawry upon mean
Processe in debt, if the debt be 20 l. or above. 2 s. 4 d.

For the allowance of a Writ of Errour upon a
Judgement. 20 s.

For Bail taken in case of debt after judgement. 12 s.

For the allowance of a Writ of Error upon a Judgement upon a *Scire facias*, and Outlawry after Judgement.

Making the Roll. For making the Roll, that a VVrit of Error is allowed on. 3 s. 2 s.

Supersedeas. For a *Supersedeas*. 3 s.

Transcript. For the transcript of a Record, being a presse, 6 s. 8 d.

For every presse more, 6 s. 8 d.

Certiorari. For the Return of every *Certiorari*. 14 s. 9 d.

Seal Nisi prius. For the Seal of every Record of *Nisi prius*. 2 s. 1 d.

Sealing of Writs and Exemplif. For the Seal of every VVrit sealed in Court. 1 d.

For the Seal of every Exemplification. 2 d.

The Fees following are due to such of the Judges who do perform the businesse.

Fines. For acknowledgement of a Fine or Warrant of Attorney for a common Recovery of Courts. 6 s. 8 d.

Signe Writs. For signing every Writ of priviledge to remove any cause, *Habeas corpus*, *Procedendo*, or *Supersedeas*, upon a *Procedendo*. 4 s.

Bails. For every Bail taken out of Court upon any such VVrit of Priviledge, wherein one cause onely is returned. 9 s. 8 d.

Confessions. For the confession of a Judgement out of Court, 9 s. 8 d.

Bails. For every Phillizers Bail, and other Bail taken out of Court, 9 s. 8 d.

For

- For acknowledging satisfaction out of Court, 9 s. 8 d. *Satisfaction.*
- For acknowledging out of Court a Deed to be inrolled, 9 s. 8 d. *Deeds acknow.*
- For admission of a Guardian out of Court, 9 s. 8 d. *Guardians.*
- For the proof of a suggestion out of Court, for every witnesse, 9 s. 8 d. *Suggestion.*
- For a Warrant for passing of a Fine, where there are more then three Cognizors, or three Cognizees, parties to the Fine, 4 s. *Warrant for Fine.*
- For every Affidavit taken out of Court upon a forreign Plea, or Recous, 2 s. *Affidavit.*
- For any other Affidavit taken out of Court, 8 d.
- For exhibiting of any Information out of Court, 8 d. *Information.*
- For signing a Bill of costs to award an Attachment for not appearing upon a Subpœna, 8 d.
- For granting a License to compound upon a penall Law, 2 s.
- For assessing of the kings part of a forfeiture upon a penall Statute after composition with the Informer, 2 s.
- For the Commitment out of Court of a prisoner to the Fleet, charged with one cause onely, 9 s. 8 d. *Commitments.*
- For every Bail taken out of Court upon an outlawry in debt upon mean Processe reversed, if the same be twenty pounds, 2 s. 4 d. *Bails on outlawries.*

Divident Fees.

*Fees in Court
to the Box.*

*These Fees following are due to the Lord
Chief Iustice, and the other Judges of
the Court of Common Pleas, by way of
Divident.*

Judgement.

FOR confessing of a Judgement in
Court, 6 d.

Satisfaction.

For acknowledging satisfaction in
Court, if the debt or damage do not
amount unto 100 l. 6 d.

If the debt or damage do amount
to 100 l. 12 d. and for every 100 l.
after the same rate, 12 d.

Guardian.

For admitting an Infant in Court to
his Guardian, 12 d.

Uil.

For reversing an outlarie in Court
for Error in the Exigent, or Return,
12 d.

For the like for the insufficiency of
the Proclamation or Return, or for
want of a Proclamation, 2 s.

Recovery.

For every common Recovery ac-
knowledged in Court, 6 d.

Fines.

For a Fine acknowledged in Court,
6 d.

Bails.

For a Bail taken in Court, or a Bail
or Recognizance acknowledged in
Court, 12 d.

Recognizance.

Deeds.

For a Deed acknowledged in Court
to be inrolled, 12 d.

Discontinuance.

For a discontinuance, 12 d.

Prohibition.

For a Prohibition granted, 9 s. 8 d.
For

The Compleat Attorney.

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For every wager of Law, or Non-suit upon a wager of Law,	6 d.	<i>Wagers of Law.</i>
For Admission of an Attorney to be an Attorney of this Court,	20 s.	<i>Attorney sworn</i>

The Puisse Judges Fees.

For every Fine drawn at Bar,	12 d.	<i>Fines.</i>
For a Recovery drawn at the Bar with a single Voucher,	18 d.	<i>Recoveries.</i>
For every Voucher more,	6 d.	
For Reverfall of an Outlary in Court,	4 s.	<i>Reversals.</i>
For taking a private Verdict,	6 s. 8 d.	<i>Privy Verdict.</i>
For taking of costs upon every Verdict,	12 d.	<i>Costs taxed.</i>
From the Clerk of the Warrants every Term, to every of the Puisse Judges,	33 s.	<i>Feod. anuale. Clericus Warr.</i>
For every Attorney, whose name is recorded in the Roll of Attorneys, every Term,	4 d.	<i>Ret. Att.</i>
For inrolling and examining the parts of a Fine, and Writs upon common Recoveries by the Statute, 23 Eliz.	6 s.	<i>Inrolling Fines and Recoveries.</i>
For the exemplification and examination of the parts of a Fine, and Writs upon common Recoveries by that Statute,	5 s.	<i>Exemplification thereof.</i>
For drawing and entring a Rule for an amendment upon that Stat.	12 d.	<i>Rules for a- mendments.</i>
For a search made upon the inrolment upon that Statute,	4 d.	<i>Searches.</i>
For a copy of a Fine or Writs in-		<i>Copies.</i>

rolled

The Compleat Attorney.

*Return of
VVrits of Co-
venant and
Entries.*

rolled upon common Recoveries inrol-
led by that Statute for every sheet, 4 d.

For the Return of every VVrit of
Covenant brought to levie a Fine up-
on, 10 d.

For the Return of every VVrit of
Entry to suffer a common Recovery,
every VVrit of Summons and Seisin
thereupon, 10 d.

*Signing Dedi-
mus potesta-
tem.*

An ancient Fee of 6 s. 8 d. for sign-
ing of a *Dedimus potestatem*, due to the
Judges of any court, who do assign the
same, which is now, and of late hath
been divided amongst all the Judges
that ride the Circuits.

*These Fees following, are due to the Clerks
of the Lord Chief Iustice, and other the
Iustices of the said Court.*

Fines.

TO all Judges Clerks of the Fines,
For taking of a Fine, or VVarrant
of Attorney, 3 s. 4 d.

*VVarrants of
Attorneys.
Bails.*

For certifying of a Fine, or Return
of a *Dedimus potestatem*, 16 d.

To the Judges Clerk of Bails, for
taking every Bail, 12 d.

Caveat.

For entring every Caveat to give no-
tice that good Bail may be taken,
12 d.

Satisfaction.

For satisfaction acknowledged out of
Court, 12 d.

*Deeds acknow-
ledged.*

For a Deed acknowledged out of
Court to be inrolled, 12 d.

Suggestion.

For the proof of a Suggestion out of
Court for every witnesse, 12 d.

For

For an *Affidavit* taken out of Court, *Affidavits.*
4 d.

For entring into his Book an Information exhibited out of Court, *Information.* 4 d.

For entring into his Book of costs a Warrant signed to award an Attachment for not appearing upon a *Sub poena*, 4 d.

For admission to a Guardian, *Guardian.* 12 d.

For entring into his Book a License to compound upon a penall Law, *Licenses.* 4 d.

For entring into his Book the kings part of the forfeiture upon a penall Law assessed by the Judges, after composition with the Informer, 6 d.

For entring into his Book a Commitment out of Court of a Prisoner to the *Fleet*, charged with one cause only, *Commitment.* 12 d.

To the puisne Judges Clerk of the Inrollments, for Copying, Inrolling, and examining the parts of a Fine and Writs upon a Recovery, by the Statute, *Inrolment.*
Fines and Recoveries, &c. 23 *Eliz.* 8 s. 4 d.

For a search made for an Inrolment upon that Statute, 8 d.

For writing a Fine, or Writs inrolled upon a common Recovery inrolled by that Statute, 8 d.

The *Custos Brevium*, who is the prime and first Officer of the Court, his Fees.

These Fees following, are the Fees which are taken by the Custos Brevium, of his Majesties Court of Common Pleas, and his Clerks in Right of his said Office, and as they were taken 11 Eliz. by the then Master of the said Office, and his Clerks.

Pt. diem.

I*n*primis, for filing any Writ, or other Record, coming after the day of the return thereof, except Writs of privilege, *De veniendo*, & *redeundo* and also VVrits of privilege, called *Prop.* or *post diem.* 4 d.

Pt. Term.

Item, For filing any VVrit, or other Record (except before excepted) coming after the Term wherein it was returnable, called a *Post Term.* 20 d.

Item, For filing any VVrit, or other Record coming after two Terms, called *Post Term.* for every Term after 20 d. a piece; except *Exigentis*, and Outlawries, which pay but onely. 2 d.

Item, To the Clerk of the same Office (*ab antiquo*) who enters the same, 2 d.

Item, Upon the making of the Stat. 4 H. 7. cap. 24. the *Custos Brevium* was allowed

allowed by the Court, for carrying and re-carrying of every Fine levied, according to that Statute, to *Westminster*, to the Chirographer to proclame, four Terms, 8 d.

Item, for keeping three parts of the Record of every Fine, consisting of five parts, 4 d. apiece, 12 d.

In tot. for every Fine 3 s. 8 d. where- of the Master hath 2 s. 6 d. and 14 d. is allowed to the Clerks, 3 s. 8 d.

Item, for the amendment of every Writ, or other Record, *per Warrant. Cur.* Amendments. 20 d.

Item, for every *Non est factum* plead- ed in Court, *Non est fact.* 2 s.

Item, for every Sheriffs bundle of Writs returnable of the precedent Term, and coming before *Essoyn-day* of the second Return of the new Term, 8 d. *Sherifs bundle.*

The usuall Fees allowed by the Custos Brevium to the Clerks of his Office.

I*n primis*, for every Temple-search, Searches. 4 d.

Item, out of every *Westminster* search, 2 s. 1 d.

Item, To the Clerks out of the allow- *Certiorari.* ance of every *Certiorari*, 2 s. 8 d. and for certifying the same, *secundum longi- tudinem*, and according to reason, 2 s. 8 d.

Item, to the Clerk for writing and *Exemplificat.* examining of every exemplification,

secundum

*The Compleat Attorney.**secundum longitudinem.**Porta. Bre.
Cur.**Item, To the Clerk for any VVrit,
or other Record carried into the Court,*
4 d.*Bre. de Ingrum.
& scia
Fines.**Item, for entring a common Recove-
ry-writ, super disseisinam in le post,* 8 d.
*Item, for every Fine passing in the
Office,* 14 d.*Ne recipiatur.**Item, for entring into a Book every
Recipiatur coming under a Judges hand,
or by order of Court,* 12 d.*Nota Jur.**Item, for every note of Jurors names
for the Clerk of the Juries to make fur-
ther Processe by,* 4 d.*Copia ex sa.**Item, for every note of an Exigent,
for the clerk of the Outlawries to make
further Processe by,* 8 d.*Searches.**Item, for the search of any Book of
Entries of any VVrits for every Term,*
8 d.*Copies.**Item, for the Copy of any VVrit or
other Record, for every sheet,* 8 d.*The usnall Fees allowed by the Custos
Brevium, to the Bag-bearer of the Of-
fice, being alwaies the common Voucher
of the Court.**Searches.**Inprimis, for every search under five
years,* 1 d.*Item, for every Temple search,* 5 d.*For every Westminster search* 12 d.*Porta. Bre.**For any VVrit or other Record car-
ried into the Court,* 5 d.*in Cur.**Recupat.**For every common Recovery suffer-
ed in Court (being the common Vou-
chee)*

chee) 4 d. a piece, 4 d.
For every Attorney sworn in Court, *Attorn. jur.* 3
6 d.

*The Fees of the Clerk of the Inrolments of
VVariants and Estreats, in the Common
Pleas, as are now, and have been taken
these two and thirty years, and as I con-
ceive, were taken ever since 31 Eliz.
saving the Fees hereafter mentioned,
allowed per ordin. Cur.*

Every Inrolment containing a fide *Inrolment.*
of a Roll, 5 s.
For a full Roll, 10 s.

And so according to the rate.

Every Warrant of Attorney in debt *VVar. Attorn.*
transgr. & detainue, 4 d.

The Sheriffs Warrants, 12.

Every other VVarrant, called double
VVarrants, 8 d.

For a Post Term, 4 d.

The Lord Mayor of London his War-
rant, 5 s. 8 d.

The Secondaries of the Compters in
Easter Term yearly, 13 s. 4 d.

For entring of an Attorneys name in *VVar. jur.*
the Roll of Attorneys, upon his first
admittance, 3 s. 4 d.

For a Warrant upon a VVrit of Co- *VVar. sur. fine,*
venant, *per ordin. Cur.* 4 d.

Paid to the Clerk by every Attorney *Rot. Attorn.*
four pence a Term, called the Roll
groat, which is paid to the Judges Box,
and I conceive it to be due ever since,

The Compleat Attorney.

	11 Eliz.	4d.
<i>Recuperat:</i>	Paid also to the Clerk by the Prothonotaries,	12 d.
	Upon every Recovery which is also paid to the Judges,	12 d:
<i>Attorn. Jur.</i>	To the Clerk when an Attorney is first sworn.	12 d.

The Chirographers Fees.

<i>Fines.</i>	I Nprimis, the ancient Fee limited by the Statute 11 Eliz. for every fine, 4s.
	Item, from 4 H. 7. for the service in proclaiming fines, 8d.
	Item, by Stat. 23 Eliz, for writing the Roll, 4d.
	So the Chirographers fee for every fine is, 5s.

Other Fees also due, and anciently paid to the Chirographers, viz.

<i>Exemplification</i>	F OR exemplifying a fine the Term in which it was ingrossed, 2 s. 8 d.
<i>Copy.</i>	For every sheet of every fine, of twelve lines copied out of the Record, 12 d.
	For the sight of every Record, being ancient, from H. 8. upwards. 3 s. 4 d.
<i>Searches.</i>	For the search of every fine from H. 8. to this present, for every year, 8 d.
	For the search of every fine during the

The Comptroler Attorney.

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the Reign of H. 8. for every year,	12 d.	
For certifying of every Record by a Writ of Error,	12 s.	<i>Certiorari.</i>
For a <i>Quid juris elamat quem redditum, reddit. & per quæ servit.</i>	6 s.	<i>Quid jur. clam. &c.</i>
For entring a claim upon a Record,	5 s.	<i>Claims.</i>
For allowing of Proclamations upon fines brought into the Office after the Term ended,	6 d.	<i>Pt. Fines.</i>
For the <i>Post Termin.</i> of a fine,	12 d.	<i>Pt. Terms.</i>

The Chirographers Clerks Fees for ingrossing of Fines by the Attorney which sues them out.

THe Chirographers Clerks have received an allowance of the Attorneys for their pains for them, which heretofore have been more advantageous unto them then now it is, being reduced to 2 s. 6 d. in certain, had, and made at the request of an 100. or 80. of the most antient Attorneys, with *John Brewer, Esq.* Clerk of the said Office, in 2. or 3. of King *James.* To which agreement had and made in writing, the said Attorneys set to their hands, and the same was delivered to *Sir Edward Cook* Knight, then Chief Justice of the Common Pleas, and hath so continued ever since,

Fines ingros.

2 s. 6 d.

For this allowance the Clerks do write more then all the officers, through which Fines do passe, viz. They write

R 2

every

The Compleat Attorney.

every Fine long, or short, four times
over in a great set hand.

*Fees belonging to the Clerk of the
Treasury.**Copy.*

FOR the Copy of every Issue and Im-
parlance, for every sheet, 4 d.
For every Judgement, Deed inrolled,
and reall Action, for every sheet, 8 d.

Searches.

For the search of every Term above
ten years, 4 s.

*Exemplifi-
cation.*

For every Exemplification, not ex-
ceeding three sheets, 7 s.

*Records of
Nisi prius.*

For every sheet more, 12 d.

For every Record of *Nisi prius*, not
exceeding three sheets, 2 s.

For every sheet more, 4 d.

*Fees for the Keepers of the Treas-
ury from 12 Eliz.**Searches.*

IN *primis*, for search of a Term above
ten years, 8 d.

For seven years under ten years, 4 d.

Portam Rot.

For three years, 0

Ligam Rot.

For search of a Plea-roll, 4 d.

For Roll carried into the Court, 6 d.

For making up a Term and Record,

3 s.

Attorn. jur.

For every Attorney sworn in Court,

12 s.

Jur. at Bar

For a Jury at Bar, 5 s.

Nisi prius Mid.

For a *Nisi prius* in Mid. 2 s.

Wager de leg.

For a wager in Law, 5 d.

For

The Compleat Attorney.

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For a Copy of a <i>Præcipe</i> , after the Term,	18 d.	
For a fine acknowledge in the Treasury,	4 d.	<i>Copy per fines.</i>
For a Warrant of Attorney left un-entred, and comes to be entred in the Roll after the Term,	4 d.	
For an Entry left out of the Kings Silver, and comes to be entred in the Office,	4 d.	<i>Intrapl. Term.</i>
From the Clerk of the Treasury for my attendance every Term,	5 s.	<i>Feod. annuale.</i>
For my Key after the Term,	18 d.	<i>Claves 7hes.</i>

The fees of the Clerk of the Kings Silver, as they were taken in the eleventh year of Queen Elizabeth, in the sixteenth year of King James, and in the late Kings time, and since.

I nprimis, for the fees of every Ordinary fine taken by the Lord Chief Justice of the Common Pleas, or any Judge of Assize in the Western circuit, together with the Copy, or <i>Post fine</i> ,	18 d.	<i>Fines in the Western Circuit.</i>
For every fine taken in the same circuit by speciall Commission, and for the Copy of the <i>Post fine</i> ,	22 d.	<i>Fines by speciall all Deeds.</i>
For every ordinary fine elsewhere in England, and Monmouthshire, taken as aforesaid without Commission, and for the Copy,	10 d.	<i>Ordinary fines.</i>

Western.

For every Fine taken by special Commission out of the Western circuit, and for the copy, 14 d.

Severall capti.

For every severall caption in any Fine where it is taken at severall times by speciall Commission, over and above the former rates, 4 d.

Certiorari.

For every Fine certified by *Certiorari* after the death of any Judge, or other Commissioners, over and above the former rates, 6 d.

Pt. Term.

For the *Post Termin.* of every Fine brought in the next vacation after Return of the Writ of Covenant, 6 d.

Searches.

For every search of any Fine every Term, 4 d.

Copia.

For every copie of the Entry of the kings silver, 8 d.

Ne recipiatur.

For every Fee of a *Ne recipiatur*, of any Fine, either by Order, or Warrant of the Court, or any Judge, 3 s. 4 d.

For the continuing of any such Order or Warrant from Term to Term, till it be dissolved. 3 s. 4 d.

*The Philizers Fees.**Cap. al. & plur.*

In primis, for every *Cap. Al. & Plur.* *Cap. in Debt, Detinue, and Trespass*, not having more then four names in a Writ, and Entry thereof, 6 d.

Delivery of record of the Cap. Testat.

Item, for delivery of every first *Cap.* upon Record and Entry thereof, 4 d.

Pone sum.

For every *Testat.* upon any of the said Writs, *Pon. in Replevin & Summons*, 12 d.

Item,

Item, for every *Cap. Al. & Plur. Bria. in comp.*
in Accompt, Covenant, Annuity, *Eje-*
ctione firme, and upon a penall Statute,

12 d.

Item, for every *VVrit* in an *Action* *Actions super*
upon the *Cafe*, or more, according to *casump.*
the length,

12 d.

For every Return *Habend.* and se- *Return Habend.*
cond deliverance, and Entry thereof,

2 s. 6 d.

For every *Non omit. & Cap. in Wi-* *Non omit.*
thernam,

2 s.

Withernam.

For every *VVrit* of Partition, *War-* *Partition, wast.*
rant Charte, Quare impedit, and waste, *Quare impedit.*

12 d.

War. Chart.

For every *VVrit* of Inquiry of dama- *Inqui. de dam.*
ges in real *Actions*, *Scire fac. & Super-* *Scire fac. super-*
Jedeas,

2 s.

sed. Gr. & pet.

For every grand *Cap. Al. Sum pet. cap.* *cap. Copia in-*
and Entry thereof,

2 s. 6 d.

de.

For the Copy of the Entry thereof,

8 d.

For the demand in every *VVrit* of *View.*
View, and Entry thereof,

2 s. 6 d.

For every *VVrit* of *Seisin* and Entry *Seisin.*
thereof,

4 s. 6 d.

For the *View* prayer,

2 s.

For a copy of the entry thereof,

8 d.

For every *Writ* of *Habeas corpus, duc-* *Habeas corp.*
coram, distring. nuper vicet. & distring. *& distring.*
ballivum,

2 s.

For every *VVrit* of *Rescous* and En- *Adjoi riment.*
try thereof,

2 s.

cont. resort.

For the Entry of every *Adjournment*, *Rescous.*
Discontinuance, and *Resort*,

4 d.

For every speciall *Bail*, and the Entry

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	thereof,	2 s. 10.
	For every Appearance in reall and mixt Actions,	4 d.
<i>Appearance.</i>	For every Appearance upon Writs to arrest, and Entry thereof,	12 d.
<i>Searches, rules, copies, number-rolls.</i>	For searches, copies, number-rolls, and giving of rules, each of them,	4 d.

Exigents Fees.

Feed. Exigents.

EVER since the Statute of Henry the Eighth, which gave the Proclamation upon the *Exigent*, the whole Estate of the Exigents Office did consist in the making of three Writs, *Videlicet*, an *Exigent*, a *Supersedeas*, and a *Proclamation*, all which Writs are warranted by one and the same Record.

For all the time of our remembrance and experience in the said Court, which hath been (by the most ancient of us) for about thirty years or thereabout, the Fees of the said Writs were as follow, *videlicet*,

The <i>Supersedeas</i> ,	2 s.
The <i>Exigent</i> ,	11 d.
The <i>Proclamation</i> ,	6 d.

Which fee of 6 d. was given by the Statute of 6 Henry the eighth, being now about an hundred and ten years since.

About eight or nine yeares since the *Supersedeas* (*quia improvidi*.) being the least Writ in labour, and more

more in profit then both the other, was granted by Letters Patents under the great Seal of *England*, by the late King of famous memory, to Master *John Murray*, then of his Majesties Bed-chamber; and partly to avoid contestation with his said Majesties grant, and upon hopes and promises of some recompence other way, the Exigents did give way to the said Patent, and have ever since lost the benefit of the *Supersedeas*, whereupon the Judges did give increase onely of one peny to be taken upon the *Exigent*, for the relief of the Exigents, and their Clerks; and so the *Exigent* was made twelve pence, which increase of a peny, is all the recompence which hitherto they have received for that great losse of the *Supersedeas*.

We have likewise heard, that above fourty years since, and before our times, by occasion of an Act of Parliament, made 21 *Elix.* whereby the Proclamation of the *Exigent* was much enlarged without any addition or increase of Fee, there was one peny added to the *Exigent*, to be given to the poor Clerks for writing the said Writs, over and above the ancient allowance, which peny hath ever since been paid to the said poor Clerks accordingly, without any benefit to the Masters themselves.

Other increase, addition, or alteration of Fees in our Office we know not

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of, nor never heard of, although the length of the said *Exigent*, or Proclamation, with their Entries, considering the losse of the *Superfedeas*, (all which we humbly submit to his Majesties Commissioners) might, perhaps, have justly deserved some further improvement. And it is certainly true, that no other increase of Fees hath been in our Officers since 11 *Eliz.* nor for ought we ever heard, or can by any means conjecture for these hundred years at the least.

HILAR. TERTIO
CAROLI
REGIS.

The chief Clerks of the Jurors.

A note of all such Fees as are now usually taken by the Clerks of the Jurors of his Majesties Court of Common Pleas at Westminster, being the same, and no other then such as have been taken time out of minde.

Habeas corpus.

Inprimis, for a Writ of *Habeas corpus*,
jurator, in debt and trespassse, 10 d.
For the like Writ in all other Actions,
16 d.

Distring.

For a *Distringas cum decem Taler*,
2 s. 4 d.

Search copy.

For Terms search, the Copy of a
Jury

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Jury, a number-roll, and a discontinuance and adjournment for every of them, Court adjourn. 4 d.

The Clerk of the Essoyns.

Inprimis, for every Essoyn and Ex-ception, Essoyn except. 4 d.
 For the Copy, 4 d.
 For every Adjournment, 4 d.
 For the Copy, 2 d. Copia.
 For every *Idem dies*, 4 d.
 For every Non-suit for want of Adjournment, Adjournment.
 Adjournment in Actions personall, 2 s. 4 d.
 For the Copy, 12 d. Copies:
 For every Non-suit in Actions reall, Idem dies. 4 s. 4 d. Non prof.
 For the Copy, 12 d.
 For the exemplification of every Essoyn and Non-suit thereupon when it shall happen, being very seldome, Exemplificat. 7 s. 6 d.
 For the Copy thereof, 3 s. 4 d.
 For the Clerk, 12 d.
 For severall Fees from severall Officers of the Court towards the numbering and marking of the Rolls, Feed. annuale. 4 l. 9 s.

Outlawry

Outlawry Office.

*In the Kings Attorney Generall
his Office of Outlawries execu-
ted by h's Deputy Mr. Johnson,
the Fees are as follow, viz.*

Cap. ul special.

FOr a special *Cap. utlegat.* against
body, lands and goods, 2 s. 4 d.

For a *Proprium*, 14 d.

*Habeas Corpus
duces tecum.*

For every *VVrit* of *Hab. Corp.* & *duces
tecum*, when they are sued forth,
2 s. 4 d.

If a *Proper*. 14 d.

Cap. utlegat.

For a generall *Cap. utlegat.* 10 d.

*Generall Certif.
nil in lect.*

If a *Proper*. 6 d.

For ingrossing and certifying a spe-
ciall *VVrit*, with the inquisition return-
ed by the Sheriff, of lands, or goods
found thereupon, and for the *Exigent*,
with the Return thereof at large cer-
tified into the Exchequer, when it is
required, the Office-fee is eight shil-
lings, unlesse it be commanded by the
Lord Treasurer, Chancellour, or Ba-
rons of the Exchequer, or by the Kings
Attorney Generall, or Solicitor for his
Majesties service onely, then no Fees
are due, 8 s. *aut nil*.

*Certific. Rever-
sal in secum.*

For ingrossing and certifying a Re-
versall into the Exchequer to discharge
seisure upon Outlawries, when any is,

5 s.

And

And to the Clerk.	4 d.	<i>Exon. libri de</i>
For entering the reversall in the Outlawry Office to discharge all Processe thereupon, or upon any VVrit of Errour.	2 s. 8 d.	<i>utl.</i>
For certifying of an Outlawry, or Reversall when it is pleaded,	2 s.	<i>Certific. utla. vel Reversal.</i>
And to the Clerk,	4 d.	
For the search of an Outlawry one Term (as in all other Offices)	4 d.	<i>Search.</i>
If above a year, then	3 d.	
a Term, is the utmost,	3 d.	
For entering and filing an Exigent, with one Processe thereupon,	4 d.	<i>Filaco exse.</i>

These severall Fees aforesaid, were paid and received in Easter Term, 34 Eliz. and ever since, to mine own knowledge, for so long I have been and continued Clerk, and to all Attorneys Generall that have been since that time.

These (as I understand) are the true Fees.

The Fees of the Seal for VVrits.

ALL VVrits for the Kings Bench, and Common Pleas,	7 d.	<i>Seals of VVrits.</i>
The exemplification of the Kings Bench,	2 s. 6 d.	<i>Exemplific.</i>
The exemplification of the Common Pleas,	2 s. 6 d.	
Outlarie,	1 d.	
Propr.	1 d.	

Fees due to the Marshall, and Proclamator of the Court of Common Pleas, given by Order made by all the Judges of the Court, Term, Trin. 31. H. 1. Post conquestum, and received accordingly by the said Marshall and Proclamator, for any thing appeareth to the contrary, untill 11 Eliz. and ever since.

Judgements.

Fines.

*In primis, for every Judgement and Nonsuit, 4 d.
Item, for every Fine, 8 d.
Item, for every finall Judgement, 12 d.*

Chief Usher of the Exchequer, and Marshall and Proclamator of the said Court of Common Pleas by Lease from Clement Walker Esq. who hath the same Office in inheritance by grand Serjeanty.

The four Criers.

Hereafter do ensue the good Ordinances and Rules made as well by the kings Justices of the Common-Pleas in times past, as by the Justices now being, for the good Rule and Order of the said Court, which same now Justices do charge and command every of the said Officers and Attorneys well and truely to observe and keep, upon the pains therein limited.

Which

Which said Orders were inrolled
Termin. Trin. 35 H. 1. Post conquestum
Rw. 494. To: Priest Chief justice of
the Common Pleas, Ni. Austen Per.
Arder, Ro. Davers, Ro. Dawby, Wa.
Moil, and Iohn Needham, Justices of the
same Court.

The Criers Fees from the 11 Eliz.

For every Judgement,	4 d.	<i>Judgements.</i>
For every finall Judgement,	12 d.	
For every Non-suit,	4 d.	
For every Fine,	8 d.	<i>Fines.</i>
For every Recovery,	8 d.	<i>Recoveries.</i>
For calling a Jury, if they fill not,	2 s.	<i>Juries.</i>

For every jury, if they fill, and serve,
 and give up their verdict the same day,
 at the Bar the same day, and for keep-
 ing them till then, 6 s.

If the Jury lie all night, that we be
 forced to watch and wait on them all
 night, 30 s.

For carrying every bundle of Re-
 cords out of the Treasury into the
 Court, and back again into the Trea-
 sury, 6 d. *Carrying Rolls.*

For every Attorney that is sworn, 6 d. *Attorn. jur.*

For every Bail, 12 d. *Bails.*

For every Oath in Court, 12 d. *Oaths.*

For every wager of Law, old Fees, 4 s. 4 d. *Wager of Law.*

For every Scire facias called in court, 4 d.

For

*The Compleat Attorney.**Nisi prius.*For every *Nisi prius* before my Lord
Chief Justice, 4 s.*Guardians.*For every admittance to a Guardi-
an, 12 d.*The Fees of the Keepers of the
Court from 11 Eliz.**Feod.annuale.*From the Clerk of the Treasury for
hanging the Cloth of the Court,
6 s. 8 d.*Wagers of Law.**Attorn. jur.*For a Wager of Law, and Wager-
men, 9 s. 6 d.

For a Jury at Bar, 5 s.

For every Attorney sworn in Court,
12 d.*Nisi prius.*For a *Nisi prius* in Midd. 2 s.*Bails.*

For a Bail, 4 d.

Fines.

For a fine, 4 d.

Deeds acknow.

For a Deed acknowledged, 4 d.

Satisfaction.

For satisfaction acknowledged, 2 s.

*The Fees of the Clerk of the In-
rolment of Fines and Recove-
ries.**Of Fines and
Recoveries in
grosse.**Exemplificat.*In primis, the fee due to the Judges by
the Statute of 23 Eliz. for inrolling
of every Fine and Recovery, 6 s. 8 d.Item, due to the Judges by the same
Statute for exemplifying every Inrol-
ment, 5 s.*Searches.*For search of every fine inrolled for
every year, 16 d.

For

For copying every Fine inrolled, for Copies.
every sheet, 12 d.

For the Clerks Fee for inrolling by Inrolments.
the Roll, 8 s. 8 d.

For exemplifying after the same Exemplification,
rate, 8 s. 4 d.

For every Rule upon Amendments, Rules for a-
mendments, 3 s. 4 d.

For returning Writs of Covenants Returne of
upon Fines and Writs of Entry, Sum- Writ of Entry.
mons, and Scisins upon common Re- Covenant Sei-
coveries, as Deputy of Record for She- fins, &c.
riffs appointed by the Court, the ancient Fee is, 2 s.

The Porter of the Court his Fees from
11 Eliz.

FOR every Writ of Entry with Mr. Writs of Entry
Attorney generall, 4 d.
For a Jury at Bar, 5 s. Juries at Bar.
For a Nisi prius, 2 s. Nisi prius.
For a Wager of Law, 6 d. Wagers of Law.
For a Fine acknowledged, 4 d. Fines.
For a Bail, 4 d. Bailes.
For satisfaction acknowledged, 2 d. Satisfaction.
For the Attorneys oath, 12 d. Attorney sworn.
For a Guardian, 4 d. Guardian.

Alienation Office.

Thomas Ravenscroft, Francis Poulton,
George Coulthrop, Esq; Commissio-
ners.

Tho. Bond Esq; Receiver.

Take no Fees, but receive a certaine
stipend from the King. S

The

*Fees taken by the Master of the Chancery,
for that Office appointed.*

Docquet. **F**OR signing every Docquet upon Licence and pardon of Alienation, 2 s.

Pt. writs. For every Writ of Entry, for Lands holden in cheif, 2 s.

Affidavits. For Writs of Entry of Lands not holden in cheif, 4 d.

For *Affidavits* upon discharge of Tenures, 2 s.

*The usuall Fees taken in the Office of
Compositions for Alienations, by the
Clerks there.*

Certificate. **F**OR a Certificate upon a Writ of Entry, 3 s. 4 d.

Pardon. For the Warrant to the great Seal for pardon of Alienation, 10 s.

*Discharge of
Processe.* For viewing the Subjects Evidences, search of the Tenures, and drawing of the Affidavit with Processe, to be discharged, 6 s. 8 d.

Release. For a Release in nature of a pardon of alienation upon a common Recovery, and for the like Release upon a special Livery, and also for a Release upon a generall pardon at the Coronation, or other times for each of them, 1 l. 3 s. 4 d.

*Discharge of
Seizure.* For the nore of a Sheriffs Discharge upon a Seizure, 3 s. 4 d.

For every Exo, and for certifying thereof

thereof into the Exchequer, 12 d.

For the sheriffs acquittance, 6 s. 8 d. *Acquittance.*

For entering in a large book every Entry of writs
Writ of Covenant finable, *videlicet*,
in the terme time, 6 d.

And in the vacation, 12 d.

For entering in an other Book re-
mayning in the said office every Doc- *Licence of Alie-*
quet upon a licence of alienation in *nation.*
the terme time, 12 d.

And in the vacation, 2 s.

For every Docquet for a pardon of *Pardon.*
Alienation in proceffe of *Disfringas*, or
Scire facias, 2 s.

For every writ of Entry of lands
holden in *Capite*, and entred in the *Entry of Lands*
same book, 6 d. *holden.*

And in the vacation, 12 d.

For indorsing every writ or En-
try 6 d.

For indorsing every writ of Cove- *Indorsing Bre.*
nant in terme, 4 d. *Int. Bre.*

In the vacation, 6 d.

For entering unfiled writs, 6 d.

For drawing the discharges of te-
nures in Parliament, and entering *Discharge of*
them, 3 s. *Tenures.*

The under-sheriff of Middlesex takes
these Fees following in his Majesty's
Court of the Common Pleas

Warrant.	For a warrant upon a <i>Capias</i> , for every name.	4 d.
	For returne of a <i>Venire facias</i> , 2 s.	
Returne <i>Venire facias</i> .	For a warrant upon a <i>Capias</i> <i>ad legat</i> .	4 d.
Returne <i>habeas Corpus</i> .	For the returne of a <i>Habeas Corpus</i> .	4 d.
Sum. Jur.	For summoning the jury for every name,	4 d.
<i>Capi Corpus</i> .	For a <i>Capi Corpus</i> for every name	4 d.
	For the returne of an <i>Exigent</i> for every name,	4 d.
Returne <i>exsa</i> .	For returne of a Proclamation, 12 d.	
	For the returne of a <i>Scire facias</i> , 2 s.	
Returne <i>procl</i> .	For the returne of a <i>Nihil habet on</i>	
<i>Scire facias</i> .	a <i>Scire facias</i> ,	12 d.

The Warden of the Fleet, his

Fees

A Note of the Fees due and belonging to the warden of the Fleet, and under officers, as appeareth by a commission under the Great Seale of England, from the late Queen Elizabeth, in the thirteenth year of her Reign, and confirmed in the seven and thirtieth year of her Reign, what every severall Prisoner in their severall degrees ought to pay.

AN Arch-Bishop, a Duke, a Dutchesse, are to pay for their commitment Fee to the said Warden and his officers, having the first weekes dyet with wine,

2 l. 10s.

Also they have to pay for their ordinary weekly dyet with wine, 3 l. 6s. 8d.

A Marquis, a Marquesse, an Earle, a Countesse, a Vice-countesse, are to pay for their commitment Fee to the said Warden and his officers, having the first weekes dyet,

14 l. 11s.

Also they are to pay for their ordinary weekly dyet with wine,

2 l.

A Lord spirituall or temporall, a Lady the wife of a Barron, or Lord,

The Compleat Attorney.

are to pay for the commitment:
Fee as aboveſaid, having the firſt
Weeks dyet with wine, 11 l. 4s. 10 d.

Alſo they are to pay for their ordi-
nary weekly commons with wine,
1 l. 6 s. 8 d.

A Knight, a lady the wife of a Kn,
a Doctor of divinity, a Doctor of law,
or others of like calling, are to pay as
aforeſaid for their commitment Fee,
having the firſt weeks dyet with wine

Alſo they are to pay for their ordi-
nary weekly commons, with wine,
1 l. 8 s. 6 d.

Commitment.

An Eſquire, a Gentleman, a Gen-
tlewoman that ſhall ſit at the Paſtor
Commons, or any perſon under that
degree, that ſhall be at the ſame com-
mons, are to pay for their commit-
ment-fee as aforeſaid, having the
firſt weeks dyet with wine, 3 l. 6 s. 8 d.

Alſo they are to pay for their ordi-
nary weekly commons with wine,
10 s.

A yeoman or any other that ſhall
be at the hall commons, man or wo-
man; are to pay for their commit-
ment fee having the firſt weeks dyet,
33 s. 4 d.

Alſo they are to pay for their ordi-
nary weekly commons, 5 s.

A pore man in the ward, that hath
part of the Box, is to pay for his com-
mitment Fee, having no dyet 7 s. 4 d.

Alſo

ment have) 4d. the mile where they are apprehended and 6 d. the mile back againe, and the clerke hath 2 s. for making the Writ.

A Table of the due fees of the Prothonotaries Court in the common Pleas.

These are the fees due and belonging to the three Prothonotaries of the court of Common Pleas at Westminster, for entries of Declarations, Pleas, and Judgments. And also for the making and enring of writs in their severall Offices, and for other dues belonging to them, confirmed and allowed by the late King, by his Letters Patents under the great Seal of England, dated at Cambury the 22. July in the 12 year of his Reign, and are mentioned and expressed in a Schedule of fees to the said Letters annexed, and recorded in his Majesties court of Common Pleas at Westminster, in the of Terme St. Michael next following. Rot, quinto, sexto, septimo, octavo, nono.

Common declarations & pleas

IN primis, for the entry of every common declaration, common Plea in Bar, wherein no free hold is pleaded common Replication, and Rejoinder in actions Personall, 12 d.

For the entry of every speciall declaration, speciall plea in bar, or Abatement free hold, Replication or Rejoinder, and pleas subsequent, in sheets, every sheet containyng 12. lynes at the least, and every lyne containyng

layning ten words.

And for every sheet exceeding, 8 d. *Special Narr*

For every declaration in actions in *special affi*
upon the Case, Eject. ferme, accompt, ons,
annuity, conspiracy, covert, deceit, par-
tition, *Plagies acquies*, and debt upon
statute, Plaint in assize, and the like
speciall actions, reall, mixt, and po-
pular actions, if the declaration or
plaint exceed not three sheets, 2s.

And for every sheet exceeding, 8 d.

For the entring of every bar, repli-
cation & pleas, subsequent in every of *Bar in speciali*
the actions, last above recired, & in the *actions.*
like actions not exceeding 3. sheets, 2s

And for every sheet so exceeding,

8 d.

For the Oyre of every Bill, Obliga-
tion, Indenture, Record, or Certificat *Oyre de fait*
or the like, entred in *hac verba*, not
exceeding the length of three sheets,

2s.

And for every sheet above that

length, 8 d.

For Recording every appearance *Appearance.*

by the Court, 2s. 4d.

For the entry of every Recogni- *Recognizance.*

zance, without condition, challenge

to the sheriff, or Coroners, or to the

Ayay, or other speciall averments, 2s.

And for the entring of every Re-

cognizance with a condition, 4s.

For every judgment in debt, Tres- *Judgment.*

passé, or Detinue, without a Tales

for the Prothonotary, 2s.

And

Adjournment. And for entring every Adjournment, 4 d.

Judgment. For every Judgement with a Tales, besides the fee above received, 2 s.

Remanets. For every Remanet, and judgement or costs given to the Defendant by the Statute besides the Fee abovesaid 2 s.

Judgements. For every judgement in all other action, as well personall as mixt, and reall and Prohibitions, and the like, 4 s.

Satisfaction. For every satisfaction, *Recordatur*, continuance, *Reposcit*, relinquishment *Recordatur* *Nolle prosequi*, or the like in actions personall, 4 s.

Discont. re- And in Reall actions, 2 s.

trazit. For the entry of a single Recovery *Nolle prosequi* 4 s. and the writ of seizin thereupon Recoveries, 6 d.

And for every voucher more, 4 s.

For the entry of every *Mittimus* & *Dedimus potestatem*, for a common Recovery, 6 s.

For the entrance of a Summons *ad warr.* for a common recovery, and the writ of Summons *ad warr.* 6 d.

For the Entry of a *Certiorari* to certify a warrant of attorney for the Tenant or voucher, 4 s.

And if for both, 6 s.

forreign Vou- For every forreigne voucher sent to chers, the common Pleas to summon the Vouchee, if the record be not above three sheets, 2 s.

And for every sheet more, 8 d.

The like fees are to be paid when the Record

Record is remitted back again, after the Voucher determined, 12 s. 8d.

For the entry of every speciall Verdict, whereupon a *Cur advisat. vult.* is entered; being not above the length of three sheets, written as aforesaid, 2 s. diff

And for every sheet exceeding that length, 8 d.

For the entry of every generall Verdict, with a *Cur advisat. vult.* without a Tales. 2 s. Generall verdict.

And with a Tales. 4 d.

For the entry of every Remittitur of Debt or damages. 12 d.

For the entry of every information upon any penal Law, and signing the Subpoena only, 8 d. Information.

For the entry of every Summons for a Prohibition to be granted, not exceeding the length of three sheets, as aforesaid, 2 s. Prohibition.

And for every sheet above that length, 8 d.

For the entry of the oath of every witness to prove the Summons in a Prohibition, or *Audita querela* brought by an Infant, and the entry of the Proofs *De morte et vita virum*, Dower, and the like Action and Suits, 2 s. Proof de sugg.

For the releasing of any default in any reall action, 2 s.

And entering the recitall of the grand Cape, 4 s.

And if under five marks, Nihil

Exam. Record. For examining every Record of *Nisi Prius*, 12 d.

Record in Coun. Palat. For making the record for triall of an issue in any of the County Palatines, for the first three sheets, 2 s.

And for every sheet more after, 4 d.

Exemplific. For the exemplification of any record, not exceeding six sheets, 5 s.

And for every sheet exceeding that rate, 8 d.

Seisin in dow-er. For entring of seisin in Dow-er, and dying seized, the return of the Seisin, exceeding not above three sheets, 4 s.

For every sheet exceeding, 8 d.

Non Ponend. in assis. For entring of writs of exemption *de non ponend. injurat.* and Patents, *de libert. allocand.* and protections, cognizances of Pleas, and the like, according to the rate abovesaid, if they exceed not three sheets, 2 s.

Cog. de Pleas. And for every sheet exceeding, 8 d.

For the entring the default upon the distress in wast, *Quare impedit*, and the like, and judgment thereupon, if the title or court do not exceed three sheets, 6 s. 4 d.

Judgement per default in wast. And if it be more then as aforesaid, for every sheet, 8 d.

Quare impedit. For entring of a *Quo Warranto*, if it exceed not three sheets, 2 s.

For the entry of every plea thereupon according to the same rate before 2 s. 8 d.

Quo warranto.

For

For the entry of a Plea of account *Account before*
pleaded before Auditors, if it be not *Auditors.*
above three sheets, written as above-

said, 2 s.

And if more for every sheet ex-
ceeding, 8 d.

For the entry of every summons, *Severances.*
and Severance, and Ayd prayer, 2 s.

For the admission of an infant to *Ayd-prayer.*
his *Prochein amie*, or Guardian, 2 s.

And if it be by comission, 4 s.

For entering of the defendants dis- *Cap. pro fine.*
charge upon a *cap. pro fine*, or for a
contempt, 2 s.

For the like upon Rescous, returned
and admitted to his fine, 4 s.

For traversing of a Rescous, and
issue thereupon, 6 s.

For entering the allowance of every
general and speciall pardon of utlawry
before Judgment, and after, 5 s.

For entering of a *Dies dat*, in debt,
detinue, and trespass, 12 d.

And in all other Actions, 2 s.

For the entering of the receite of a
Feme covert, tenant in taile, lessee for
yeares, or the like, 2 s.

And for the entry of the plea, if it
exceed not three sheets, 2 s.

And for every sheet exceeding,
8 d.

And if the Receit be by writ, then
more for entering of the Writ, 2 s.

For the entering of Assize delivered
in the common Pleas by Justices

of assize to be inrolled, for every sheet, 12 d.

And if the Assize comes into the Common pleas by *Cerciorari*, then more for entering the *Cerciorari*, 2 s.

Abridgment.

For entering of every abridgment of the demand in Dower, Assize or the like, 2 s.

Pone.

For the entry of every *Pone* to remove a plea by writ out of the county court there holden by Justices, and for the returne of the *Pone*, 4 s.

Mittimus.

For the entering of any record sent into the common Pleas by *Mittimus*, or otherwise, and likewise for the entry of every *Rege inconsulto*, or such like, if it exceed not three sheets, 2 s.

Rege inconsulto

For every sheet so exceeding, 8 d.

Certificat of Bastardy.

For the entering of every Certificat of Bastardy certified by the Bishop, and the awarding of the Writ and judgment thereupon, 6 s.

Journies accounts.

For the entry of the Licence of the Court to purchase a new writ by journies accounts, 2 s.

Delivery of record.

For the entry of every Original Writ delivered of Record in Real or Mixt actions, 8 d.

Challeng.

For the entry of every sheet above three sheets of every challenge to the sheriff or Coroners or to the array, or other speciall averments, or the like, 8 d.

Remanet.

For the entry of every *Remanet* in reall Actions, 4 s.

For the entry of every *Remittitur* in recall

reall and mixt actions, 101 12 s.

For the entry of every sheet above three sheets of every Aid-prayer, 8 d.

Aid-Prayer.

For the entry of an admission of a Guardian, if it be by Commission, and *Mittimus*, 6 s.

Admission to Guardians.

For the entry of a Private Scale, for every sheet, 8 d.

Privy Seale

For the entry of the Licence of the Court to compound upon penall Statutes, 2 s.

Licence.

For the entry of every warrant of Attorney made by the tenants in common recoveries, or the like, after their appearance at the bar, 2 s.

Warrant of Attorney

For every judgment by speciall confession of the title in *Quare impedit*, or the like if it exceed nor three sheets, 4 s.

Quare impedit.

And for every sheet after 8 d.

For the entry of every speciall imparlance, 2 s.

Speciall imparlance.

For the entring of every *Commititur* of a Prisoner by the Role, being brought to the Bar by writ and every tender of the body in discharge of the baile, 4 s.

Commititur.

But if it be without writ, then in either case but 2 s.

For entring of every demand, of a Prisoner to appeare and remand the said Prisoner 4 s.

Remand.

For the entry of every *Essoine* in the Plea roles, as upon wagers of law, 12 d.

Essoyne.

For the entry upon baile of every

Reversal

The Compleat Attorney.

*Narr. sur. de
mise.*

Reversal for insufficiency of *Exigent*
or of the return, 2 s. 4 d.

For the entry of every Declaration
in Debt upon demise, or the like spe-
cial Declaration, if the Declaration
exceed not three sheets, 1 s.

And if such Declaration exceed the
number of three sheets, then for the
entry of every such sheet, containing
twelve lines, and every line ten words
8 d.

Common Decl.

For the entry of every several count
upon an Original in Debt, Detinue,
Trespals, and the like, 12 d.

*Actions super
casum.
Account.*

For the entry of every several count
in Actions upon the case and account,
and the like upon several dayes, if the
count not exceed three sheets, 1 s.

And for every sheet so exceeding,
8 d.

*Special condi-
tion.*

For the entry of every special condi-
tion, or indorment of any Obligation
entred in *breve verba*, not exceeding the
length of three sheets, 1 s.

And for every sheet so exceeding, 8 d.

*Common condi-
tion.*

But if the condition be in Debt for
payment of money, at one day, or un-
der the length of two sheets, then for
the entring thereof but, 12 d.

*Mittimus.
Certiorari.*

For the entry of every *Mittimus* or
Certiorari, and the return thereof, 4 s.

But if the Return thereof exceed
three sheets, then for every sheet so
exceeding, 8 d.

Prohibition.

For entring of the Count in a Pro-
hibition, and pleadings thereupon
after

after an appearance of the def. not exceeding the length of three sheets, 2 s.

And for every sheet above that length, 3 d.

For the entry of every writ of Attaint, false or false judgment, 2 s. Judgments.

For the entry of the returne thereof & the Assignment of Errours or false oaths not exceeding three sheets, 2 s.

And for every sheet more 8 d.

For the entry of every sheet above three sheets of the oath of every witness examined to prove the Surmise in a prohibition, or *Audita Querela* brought by *Audita querela* and Dower.

an infant, and the entry of the proofs *De morte & vita viri* in dower, and the like action and suites, 8 d.

Fees due to the Prothonotaries for Writs and the entries of them amongst other dues. Fees for writs

For every writ of prohibition, or consultation, not exceeding 4. sheets, 2 s. Prohibition.

For every sheet so exceeding, 4 d.

For every Withernam return *Habend, Withernam.*

after appearance, second deliverance, writs of Privilege, *Habeas Corpus Proce Habeas Corpus dend, Certiorari*, Summons and Resummons, *Petit cape, ve. fac. sci. ja. Elegit, Bri. Spenal. Extent, Superfed. Subjæq.* writ to the Bishop, attachment in *All Dist ing. Jur. Hab. Cor. and astring. in, All. & Attaint*, And the like, *Habere fac. possessionem*, writs of View, *Mittimus indemnitas nois*, and every other speciall Writ, 2 s.

Entry of Writs.	For the entring of every such VVrit, which requireth an Entry not exceeding foure sheets, 2 s.
	And if more, for every sheet as aboveſaid 8 d.
	For every <i>Ca. ſa. & ſi ſa.</i> 6 d.
<i>Ca. ſa. ſi. ſae.</i>	For every <i>Teſtat. ſur. ca. ſa. & ſi. ſa.</i>
<i>Teſtat. diſtr.</i>	<i>Diſtring. ad delivrand.</i> and writs to
<i>Inquire in tref.</i>	inquire of Damages in Treſpaſſe and Replevin, 12 d
<i>Inquir. in caſu.</i>	For writs to enquire of Damages in
<i>cap. & Ex. pro</i>	<i>Covenant, Ejectment, Actions upon</i>
<i>ſine.</i>	the Caſe, and the like, 2 s.
	For every <i>Capias pro ſine,</i> 6 d.
	For the <i>Exigent</i> upon a <i>Capias pro ſine,</i> 10 d.
<i>Intra Return Bre</i>	For the entry of the Returne of every writ in the Prothonotaries Roll other then the <i>Ca. ſa.</i> returned <i>non eſt invent.</i> and the <i>ſi ſa.</i> returned <i>nulla habet body</i> , whereupon further proteſts awarded, not exceeding four ſheets 2 s.
	And if more, then for every ſheet, 8 d
<i>Bail. ſur. Priv.</i>	For the entring of every VVrit of
<i>Habeas corpus.</i>	Priviledge, or <i>Habeas Corpus</i> , with the
<i>Commititur.</i>	Bail for one cauſe, 6 s.
	For every name more, 2 s.
	And for every other cauſe, 2 s.
<i>Reverſal.</i>	For every reverſall upon an Outlary, for default of Proclamation with one
	name, and the bail, or <i>Nolle proſequi,</i> 4 s. 4 d.
	For every name more, 2 s.
<i>Ca. ſa. & ſi. ſa.</i>	For every <i>Ca. ſa. & ſi. ſa.</i> after a <i>De-</i>
<i>pt. Devaſtavit. viſtavit,</i>	2 s.
	VVhercof by allowance from the Prothonotaries,

Prothonotaries, the Clark hath had, 8 d.

For every sheet exceeding four sheets of writs to enquire of damages in Covenant, Ejectment, Actions upon the Case, and the like Actions, 4 d.

For the writ of *Liberat*, or the like speciall writs, 2 s.

Whereof by allowance from the Prothonotary, the Clark hath had 8 d.

For the entry of every such writ, and the entry of every other speciall writ, which requireth an entry, not exceeding four sheets, 2 s.

And for every sheet so exceeding, 8 d.

For every *Distingas* in Detinue, 12 d.

Whereof the Clarke by allowance from the Prothonotary hath had, 4 d.

For VVrits to enquire of damages in Covenant, Ejectment, Actions upon the case, and the like actions, if they exceed not four sheets, 2 s.

Whereof by allowance from the Prothonotary the Clark hath had 4d.

For the entry of every *Committitur*, upon a *Habeas corpus una cum die & causa*, with one cause returned, besides the entry of then writ, 2 s.

And for the entry of the VVrit, 2 s.

And for every other cause returned, 2 s.

For the signing of all Process upon information, excepting the first *Sub rō-na*, 1 s. 4 d.

*The Prothonotaries Clerks Fees.**Copies.*

IN *primis*, for the copies of common Declarations and Pleas, for every sheet contayning 12. lines, and every line ten words, 4 d.

For every sheet in reall and mixt Actions, and Actions upon any Statute, and the like, 8 d.

Draughts.

For drawing of every special declaration, and plea for every sheet, 8 d.

Continuance.

For every continuance every terme of every writ, issue, *imparlance*, *demur* of special verdict, or adjournment, 4 d.

Exemplificat.!

For exemplifying every recovery with a single voucher, 4 s. 8 d.

For exemplifying of a double voucher, 6 d.

And for every Voucher more, 12 d.

For exemplifying of any Record, not exceeding eight sheets, 3 s.

And for every sheet more, 6 d.

Drawing of writs and Entries thereof.

For drawing of every extraordinary long writ after the rate of every sheet, 8 d.

And for the entry thereof (if it so require) for every sheet, 4 d.

Copies of judgments.

For the copy of a judgment for every sheet, 8 d.

Entries in remembr.

For the entry of every writ, & the returne thereof into the Prothonotaries remembrances for drawing up of a judgment, if it exceed not 3. sheets, 6 d.

And

And for every sheet after, 4 d.

For entring of every common Rule into the Bill of Pleas, or common Remembrance, 4 d. *Rules.*

For the entring and ingrossing every summons for a recovery and for the making of the writ of summons, 2 s. *Summons for Recoveries.*

For the entry of every *Mittimus* and *Mittimus*. *Dedimus potesta.* for a recovery, 2 s. 6 d.

For the ingrossing of every *Nisi prius* after the rate of every sheet, 4 d. *Ingro. Nisi pri-*

For entring of every *Testat sur. ca. se. us.* & *fi. fac.* 4 d. *Intrat. case*

For the search in every term in the *testat:* Prothonotaries office, in the docquets or Remembrances, 4 d. *Searchers.*

For issuing out of the court money, of the party receiving it, 1 d. in l. *Court-money.*

For the making of every long writ, as Prohibition, and the like, for every sheet, 4 d. *Making long writs.*

For the prosecuting and issuing out of Process for the King, to bring in the party for to make fine for his contempt untill the Party render himselfe, or be outlawed. besides the fees of the court, 3 s. 4 d. *Cap. pro fine.*

And if there be cause of prosecution after the *Exigent* returned, then more, 3 s. 4 d.

For the copies of suggestion to grant a Prohibition, for every sheet, 8 d. *Copy suggest.*

For drawing of every surmise to have a Prohibition, speciall verdict, and the like, for every sheet, 8 d. *Tract. Prohibit. Special verdict.*

The Prothonotaries Clarkes Fees for Informations only.

Information.

FOr ingrossing of every Information 8 d
on

For a copy of the said Information if it amount to the number of five sheets of Paper or upwards, 3 s. 4 d.

If it be under the number of five sheets, then for every sheet, 8 d.

For the making of every *Capias pro fine*, upon an information, 6 d.

For the entring of a generall issue upon the Roll where the Information was first entred in the Terme it was first exhibited, 8 d.

For the registering of every Licence to compound in the Office-book, 4 d.

An ancient Fee due to the second Prothonotaries Clarke only.

Fines.

FOr recording of every fine acknowledged at the bar, by writ, and moved by a Serjeant, 4 d.

Secondaries Fees.

Fees due to the Secondaries of the Prothonotaries in their severall Offices.

Copies of Rules.

FOr the Coppy of every common Rule, 4 d

For taking a note of the Rule of the Judges in Court, upon a motion of a Serjeant, for drawing the same Rule in paper in Latine words, and entring it into the bill of Pleas, and the copy thereof

Drawing and entring of Rules.

thereof, the draught not exceeding six lines in paper, 8 d.

If the rule exceed 6. lines, then

12 d. *Wagers in*

For every wager in Law, in Court, Law.
or nonsuite of the plaintiff, upon a wa-
ger of Law, 12 d. *Commititur.*

For the entry of the *Commititur* of
any Defendant to the *Fleet* in Execu-
tion of any Judgment, or otherwise in
Court, and for making a copy thereof
for the Warden of the *Fleet*, con-
taining the cause of the commitment,

12 d.

For the entring of every Commit-
ment to the *Fleet*, of any person yield-
ing himselfe in discharge of his Bail,
and for the like copy 12 d.

For attending the Judge from his
chamber to *Westminster*, to take a privy *Privy verdict.*
Verdict tried at the Bar. 3 s. 4 d.

For reading the record of a Demur- *Reading record.*
rer in Court or verdict, 12 d. *Bails.*

For taking Bail in Court, 12 d.

For entring of an admission of an *Admission to*
Infant to his Prochein Amy, or Guar- *Guardians.*
dian in the Prothonotaries remem-
brance, 12 d.

For the Copy of the issue and Jurors *Copies of Issue*
names to be delivered to the Jury up- *and Jurors*
on any Triall at the Bar, 12 d. *names.*

For reading of Evidences upon Tri- *Trials at Bar.*
als at the bar of each Party, Plaintiff,
and Defendant, 3 s. 4 d. *Satisfaction*

For entring of every satisfaction by *Recordatur.*
special warrant, *Recordatur*, and dis- *Discontinuance.*

Satisfaction. continuance, 8 d.
For every satisfaction by generall
warrant, 4 d.

For entry of every will or Letters of
Administration to enable an executor
or Administrator to acknowledg satisfac-
tion, and the entry of the satisfac-
tion, 12 d.

Interrogatories For every Copy of Interrogatories,
Depositions of persons examined upon
Interrogatories by order of the Court
for every sheet, 8 d.

Per Breve de Privato Sigillo.

Wolfsely.

Fee

Fees of the Upper Bench.

A note of fees due and time out of mind used to be paid to the Prothonotaries, or chief Clerks of the Court of upper Bench, and to their clarkes as the same was presented upon oath by vertue of commission in Apr: 1630. by 29. Attornies of the same court, and hitherto taken.

Writs.

For a Latitat	§ 2. 1 d
Supersedens.	Prohibition.
Exigent in Appeal.	Consultation
Distring. in Attaint.	Proprietate proban.
Habeas Corpus.	Distring. in detinere
Certiorari.	Inquir. de valore.
Placando.	Resam.
Elegit.	Reattachment.
Subpoena	Vesa defend. in Audi-
Return habend.	ua querela.
Withernam.	Habere fac. seisinam,
Second deliverance.	& possession.
Restitution.	Respons. in Attaint.
Seire facias.	Rend. Expon.
Diminucon.	Bre. Expo.
Libello habend.	Mittimus.

All these are accountable for to the Prothonotaries, viz. for every one 2 s. out of which they allow their Clerks for writing, 4 d

Venire

The Compleat Attorney.

<i>Venire facias.</i>	<i>Sur. cepi corpus.</i>
<i>Disting. Jur.</i>	<i>Averm. vers. vic.</i>
<i>Ali. & plur. cap.</i>	<i>Fieri facias.</i>
<i>Casa.</i>	<i>Test. p. fac. & casa</i>
<i>Inquir. de Damnis.</i>	<i>Dist. nuper vic.</i>
<i>Habeas corpus.</i>	<i>Non omittas.</i>

For every of these besides the Seal, 6 d. And for every *Deliberat de Recordo*, 4 d. And for the *Jura* of the *Dist.* of *Ni. pri.* 4 d. But all these have been always to the Prothonotaries Clerks, and are not accounted for to the Prothonotaries.

In every Action whercin the *P. t. r.* covereth damages to the value of 12 l. 6 s. 8 d. he payeth 12 d. in the pound for damage clear, when the Judgment is signed.

Upper Bench Fees for Entries.

F or every deed how short soever, 2 s.	
For every Action of trespass, 1 s.	
For every not guilty, 1 s.	
For every Justification in trespass, 2 s.	
For every Replication, 2 s. 8 d.	
For every action of the case not above three sheets, 2 s.	
For every general Issue to it, 1 s.	
For every <i>Ejectione firme</i> , 2 s.	
For every Declaration in Appeal, 2 s.	
For every generall Issue therein, 2 s.	
For every Recogn. <i>Sur. He. corp.</i> for every Defendant severally, 2 s.	
For every Deposition upon all Prohibitions, 2 s.	
For every Judgment by circumst. 4 s.	
Our	

The Compleat Attorney.

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Out of which the clark is allowed,	8 d.
For every other Judgment,	2 s.
whereof the clark is allowed,	4 d.
For every Dismission,	2 s.
For every commitment in execution,	2 s.
For every satisfaction,	3 s.
For every Appearance recorded,	2 s.
For every <i>Non prof.</i>	2 s.
For every Action of Debt, Detinue, or trespass,	1 s.
For every general Issue therein,	1 s.
For every condition performed,	2 s.
For every Replication to it,	1 s.
For a Writing denied, and keeping of the Writing,	2 s.
For every Justification in Battery,	2 s.
For every <i>Aud. q.</i> how short soever,	2 s.
For every speciall imparlance,	2 s.
For every generall imparlance upon the Plea-roll,	12 d.
For every default upon record,	2 s.
For such a suggestion upon a Prohibi- tion how short soever,	2 s.
For every Recognizance to it,	2 s.
For every W. of Er. how short soever,	3 s. 4 d.
For entring the Errors,	2 s.
For entring <i>in nullo est Errat.</i>	2 s.
For every Diminution,	2 s.
For abatement of a writ of Error and licence to sue a new one,	2 s.
For entring of the same,	2 s.
For every Recognizance single, or with condition,	2 s.
For every inrolment whatsoever,	longer

The Compleat Attorney.

longer then three sheets, 6s. 8d.

After the rate for a role on both sides 6s 8d

For halfe a Roll, 3s. 4d.

For every baile by recogniz. 2s. 6 d.

Upper Bench fees of Clerkes and attornies

FOr their fees in every cause for every terme, 3 s. 4 d.

For their fees at every *Nisi prius* and inquiry of damages, 3 s. 4 d.

For their fees in every appeal, and Affize every term, 6 s.

For drawing every declaration not exceeding a sheet, 1 s.

For every sheet above one, 8 d.

For drawing every Action on the case and covenant how short soever, 3 s. 4 d.

For drawing every ejectment, 2 s.

For every sheet ingrossed in parchment 4 s.

For drawing a surmise upon a Prohibition, every sheete, 1 s.

For drawing speciall pleadings, and every sheet, 8 d.

For copies of declarations, Pleas, or other things, every sheet. 4 d.

For continuing every cause every term, 4d

For entring all things above three sheets, every sheet. 8 d.

For every judgment by circumst. 3 s.

For making every baile, 4 d.

For making every Baile of *Middlsex Distring. nuper vis. and He. Corp. per p acceptum* thereupon, 8 d.

For making every *He. corp. ad fac. He. corp. cum priviledg. Certiorare, procedend. elegit et habere fac. possessionem*, besides 4 d.

The Compleat Attorney.

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4 d. allowed by the Prothonotary, 1 s. 8 d.
 For every sheet in a writ of inquiry, Prohibition, Consultation, &c. 4 d.
 For entering every Scire facias, 1 s.

Fees received by the Secondary.

For taking the acknowledgment of a deed in court, 1 s.

For signing every judgment by confession, *nihil dicit. verdict & demurrer.*

Also for acknowledgment of every deed for every Judgment pronounced in open court every rule to alter a Visue, for every rule for a prohibition, consultation, attachment, &c. he receiveth for the poors Box, 1 s.

For allowance for a writ of Errour. *coram nobis residend.* 2 s.

Whereof to the Box, 1 s.

For an allowance of an *Aud. Que.* 2 s.

Whereof to the Box, 1 s.

Upper Bench fees.

For every common baile, 1 s. 2 d.

For a speciall Baile upon a *Habeas corpus, Certiorari*, or attachment 4 s. 1 d.

Fees received by the Second for the Judges

For every *Habeas corpus ad fac. & recipiend.* 4 s.

For every *Procedendo*, 4 s.

For every *Certiorari* to remove a foreign attachment, 4 s.

For a *Procedendo* thereupon, 4 s.

For

The Compleat Attorney.

For every *Habeas corpus cum privil.* 3 s
Out of every *Latitat* they have 8 d

Fees received by the Judges Clarke.

FOr every warrant for *Hab. corp.*
or any thing to which the Judge
putteth his hand in the Term time, 1 s
And in the vacation, 2 s
For the acknowledg^{mt} of a Deed
which he saith is for his master, 6 s. 8 d
And for his own fee, 2 s
For taking the Deposition of witnesses
upon a Suggestion for a Prohibition,
for every witness. 6 s. 8 d.
And for his own fee for every witness,
2 s

Fees paid the Clerk for the Papers.

FOr copying every special Plea, e-
very sheet, 4 d
For making the Paper-book either is-
sue or Demurrer, every sheet, 8 d
For entring into his book every record
to be read in Court, 1 s
For entring into his book every cause,
to hear counsel on both sides, 1 s
For entring every Trial at Bar, 1 s

The keeper of the Postea.

HAth for the receiving, marking,
keeping, and delivery of every
Postea, 4 d.

The

The keepers of the files of Declarations.

Hath for the filing, pying and, shewing the files
of every Clerke for every Terme, 2 s.

Fees paid to the Clerkes of the Rules.

FOR entering every Rule, except generall Rules
for answer, 4 d.

For a Copy of every Rule, 4 d.

For every generall Rule for answer, being above
three, 2 s.

For every rule given in court, with a Copy for a Pro-
hibition, or consultation, he taketh 12 d. and
the due is but 8 d. which hath beene taken above
25. yeares, 8 d.

For every rule with a Copy given in Court the last
day of the Terme he taketh 12 d. whereas the due
is but eight pence, which hath beene taken this
two or three yeare, 8 d.

For every copy of rule after the continuance day he
taketh 8 d. whereas the due is but 4 d. which hath
been taken these two or three yeares, 4 d.

All such Affidavits as are read in Court he claimes
This two yeares, or thereabouts to have the kee-
ping of them, and taketh for copies both of Plain-
tiff and Defendant at his owne discretion, which
formerly hath not beene.

Doggetmaker.

THe Secondaries Clerk, for making and keeping
the Remembrances for entres, &c. hath of every
Clerk, every terme, 8 d.

Keepers of the Bailes.

FO R entering the common bailes into Parchment
Roles every terme, every Clerke of the office
giveth what he pleaseth.

Keepers

Keepers of the Roles of writs.

FOR the carrying of Rolls of the Writs to the hall, and the office, he hath of every Clerk every term that he pleaseth.

Fees paid to the Custos Brevium and his Clerk,

F OR every record of <i>Nisi prius</i> in a short action of Trespasse,	4 s. 6 d.
For every other Record how short soever,	5 s.
For every full Presse of <i>Nisi Prius</i> or <i>Mittimus</i> ,	6 s.
For every <i>Nisi prius</i> out of the Crown side,	6 s. 8 d.
For every full Presse there,	1 s. 8 d.
For every <i>Nisi prius</i> upon an indictment for murther,	
for every name that Pleadeth to issue,	6 s. 8 d.
For every short exemplification in trespassse,	10 s.
For every Exemplification contayning a large skin,	1 l.
For the like in the Crown side,	2 l.
For every Exemplification in <i>Ejectione firme</i> ,	13 s. 4 d.
For filing a writ being a <i>Post diem</i> upon the <i>Angl.</i>	4 d.
For all pt. <i>Terminums</i> at any time after the first week ended in the second terme,	1 s. 8 d.
For every <i>Warrant</i> of attorney in murther,	1 s.
For every sheriffs <i>Warrant</i> ,	8 d.
For every other <i>Warrants</i> of attorney,	4 d.
For every search for a Roll for ten years last past,	6 d.
For every search above ten yeares last past,	3 s. 4 d.
For search for roles for six last terms,	1 d.
For search for every file of declaration, Baile, Judicial, and other writs after ten yeares,	1 s. 4 d.
For the copy of every sheet between party and party,	4 d.
For a copy of a deed inrolled, for every sheet,	8 d.
For the file of an <i>Angl.</i> for every term after one,	4 d.
For the copies of every <i>Writ of appeale</i> , every sheet,	8 d.
	<i>Fees</i>

Fees now paid to the Custos Brevium his Clerks.

For writing every <i>Nisi prius</i> , or <i>Mittimus</i> , being but one presse,	1 s. 6 d.
For every presse more then one,	1 s.
For writing every Exemplification in trespasse or Ejectment,	3 s. 4 d.
For writing every large skin of Parchment Exemplified,	6 s. 8 d.

The Fees for writing every *Nisi prius*, or *Mittimus*, were uncertain, untill about *Anno. 2. Jac.* And then it was ordered by the Judges, that the Clerks should have for writing of the first presse, 1 s. 6 d. And if more, then every other presse, 12 d. And every full presse to contain 60 lines.

Fees claimed by the Cryer and Porter : As Cryer.

For calling a Jury,	2 s.
For every Oath given in Court,	4 d.
For taking a Privie Verdict,	4 s.
For every argument in Law,	2 s.
For every wager of Law,	3 s.
For every admission to a Guardian,	6 d.
For a bail taken at the Bar,	2 s.
For calling a Nonsuit,	4 d.
For calling the Record,	1 s.
For calling a Default,	1 s.
When a Pardon is pleaded,	2 s.

As Porter.

For every triall at Bar,	3 s.
For every privie Verdict,	2 s.
For summoning the Wager-men,	3 s.
For a bail taken at Bar,	2 s.
For a Record called,	6 d.
For a Default called,	6 d.
For a Pardon pleaded,	2 s.
For a discharge of a <i>Rescous</i> ,	4 d.
For a bail taken in Court,	6 d.

Of all these Fees mentioned, and claimed by the Cryer, and Porter, these following have been paid as due, during the time of our knowledge.

As Cryer.

F Or calling a Jury,	1 s.
For swearing every witnesse,	4 d.
For a wager of Law,	1 s.
For a Non-suit,	1 s.
For a default of a Record,	1 s.
For a Defect de lege,	1 s.

As Porter.

F Or summoning the wager-men,	3 s.
Also the Porter receiveth more for the Wager-men where the Defendant wargeth his Law, or is ready to wage it,	1 s.

Fees received by the Clerk of the Errours immediately after the Statute 27 Eliz.

F Or the Lord Chiefe Justices fee for the allowance,	17 s. 4 d.
For the Receipt,	5 s.
For the Return,	2 s.
For the Certificate of the first presse,	6 s.
For writing the first presse,	2 s.
For a Supersedeas,	2 s. 7 d.

These Fees amounting to 35 s. 3 d. were paid upon the allowance of the Writ, and for the Supersedeas.

F Or the certifying of the Record for every presse, besides the first,	6 s.
For writing of every presse after the first,	1 s.
For the Roll,	1 s.
For making <i>Non prof.</i> upon the Roll,	5 s.

Also

Also immediately after the making of the Statute of An.
Jac. the Fees taken for the bail, were as followeth upon
a Writ of Errour.

To the Prothonotarie for the Recognizance, 2 s.
To the Judges Clerk, 2 s.

Fees upon a Writ of Errour.

For making the Bail, 4 d.
For drawing and entring the Recognizance, 4 s.
Now, and for the space of thirty years last past, he hath
taken upon the Receipt of every Writ of Errour, and
Supersedeas in a grosse summe, 2 l. 6 s. 8 d.
Also for certifying every presse besides the last, 6 s. 8 d.
For writing every presse besides the first, 2 s.
For every Supersedeas besides the first, with the Seal,
9 s. 3 d.

*These last mentioned, were set down by Sir John Popham,
late Lord Chief Justice, Ex relatione Edi. Pag. cler.
Error, but we do not certifie it upon our knowledge.*

Also he taketh for every bail in grosse sum, 9 s. 4 d.
For every Writ of Error, *Tam in redditione judicii
quam in ad judicatione executionis*, he taketh double fees.

*The Marshals Fees, as they were certified by Sir William
Knowls, Knight, sometimes Marshal of the Kings Bench.*

In primis, for an enlargement of every Prisoner which
is termed his admission fee. 10 s.

Also he demandeth of every prisoner upon his in-
largement, a fine, for not wearing of Irons:

For execution in every pound, 3 d.
For Actions in every pound, 1 d. ob.

The Marshall taketh for every dismission, more then the former fee of ten shilling, 8 s. 8 d.

The Deputy Marshall, and Marshalls men, take for every prisoner that is committed in Court, 5 s. 6 d.

And for every prisoner committed from the Judges chamber, 2 s. 6 d.

The Deputy Marshall taketh for the allowance of every *Habeas Corpus*. 2 s. 6 d.

The Clerk of the Fines.

THERE was an Office invented and erected about 6 *Jacobi*, whereby is taken upon the filing of every Declaration in debt, where the debt is above 40 l. and not above 100. marks, 3 s. 4 d. And above a 100. marks, and not above a 100 l. 5 s. and after the same rate, and also in the every action on the case; and trespassse for goods, where the damages are land above 40 l. the like rates; so that the Plaintiff or Defendant be not a person priviledged, nor the Defendant in *Custodia Marr.* whereas before 6 *Jacobi*, in all our memories, no such moneys were paid, or demanded.

Fees for trialls at Bar, taken by severall Officers.

T He Cryer for calling the jury,	2 s.
For swearing every witnesse,	4 d.
The Porter for keeping the doors,	5 s.
The Cryer for a Non-suit,	2 s.
The Deputy Marshall,	2 s.
The Tipitaves, or Marshalls men, for a Verdict, <i>sedente curia</i> ,	8 s. 6 d.
If the Jury lie together all night,	17 s. 8 d.
The	

The Compleat Attorney.

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The Judges Foot-cloth-men, 12 d. a piece, 4 s.

The Secondary receivers for a Verdict in Court, 2 s.

And for a privie Verdict, 13 s. 4 d, which he saith is thus divided, *viz.* The Judge that taketh the Verdict, 6 s. 8 d. To the Secondary, 2 s. and the rest, being 4 s. 8 d. among other Officers that attend.

Of all the Fees mentioned, We present these following to be due.

TO the Cryer for calling the Jury, 1 s.

For swearing every witnesse, 4 d.

For calling a Non-suit, 1 s.

To the Deputy Marshall, 2 s.

To the Porter for keeping the doors, 1 s.

To the Secondary for taking a Verdict in Court, 2 s.

To him for a privie Verdict, 13 s. 4 d.

And now they take no other Fees then these last mentioned.

We pay unto the Crown Office for estreating every amercement, 1 s.

Also there is paid to the Secondaries Clerk by every one of the Prothonotaries Clerks every Term that he faileth to bring in his Rolls within 24 dayes next following, after *Trinity. Michaelmas, and Hilary* Terms respectively, and within ten daies next after *Easter* Term, 12 d. whereas formerly they had time untill the *Essoyn* day of the next Term, to bring them in without paying any Fee.

Also there is paid to the Secondaries Clerk for the filing of every common bail, after six dayes after every Term over and above the Fee, 4 d.

The Table of which severall payments last mentioned, is remainig in the Kings Bench Office.

Fees due and received by Philizers.

For every <i>Cap. Als. Plur. Exigit, Proclam. & Distring.</i> in Trespass,	6 d.
For every Exigent and Proclamation in Replevin	6 d.
For every <i>Pone cap. als. plur. Testat. in Replevin,</i>	6 d.
For every <i>Superfedeas</i> upon the mean processe afore- said,	2 s.
For every <i>Cap. Als. Plur. Testat. and Exigit in Trus. sup.</i> <i>casum</i> , Action on a Statute, <i>Rap. custodie Trus. contra</i> <i>formam ordinationis</i> , Ejectments, and such speciall Writs,	1 s.
For Proclamations thereupon,	1 s.
For the <i>Distringas</i> thereupon,	1 s.
For every <i>Cap. Als. & Plur.</i> in an appeal of <i>Mayhem</i> ,	1 s.
For every <i>Cap. Als. & Plur.</i> in an appeal of Robbery,	2 s.
For every name in every <i>Cap. Als. & Plur.</i> in an appeal of Murther,	2 s.
For every Proclamation in every appeal,	2 s.
For every generall <i>Cap. utl. & delibatur de recordo</i> ,	10 d.
For every speciall <i>Cap. utl. & delibatur de recordo</i> ,	2 s. 4 d.
For every Writ of <i>Withernam</i> ; second deliverance, and return <i>Habend.</i> before Avowry,	2 s.
For every <i>Venire facias</i> ,	6 d.
For every <i>Distring. jur. delibatur de recordo, & jur. Nisi</i> <i>prius</i> ,	18 s. 2 d.
For every <i>Subpœna</i> upon issue by Original,	2 s.
For entry of Declarations in trespassse by Original,	1 s.
For entry not guilty thereunto,	1 s.
For entring every Ejectment and Action upon the case, not above three sheets,	2 s.
If longer, then for every sheet,	8 d.
For every generall Imparlance,	4 d.
For every speciall Imparlance,	2 s.
Copies of Writs of Attaint, before judgement <i>per</i> sheet,	8 d.

Fees due upon Trialls at Guild.hall, to the Officers of the Court.

T O the Clerk that reads the Record and Evidence,	1 s.
To the Associate,	1 s.
For every default,	2 s. 4 d.
To the Cryer,	1 s.
For swearing every witness,	4 d.
The Marshall,	2 s.
The Foot-cloth,	1 s.
The Green-cloth,	1 s. 6 d.
The Door-keeper,	1 s.
The Hall-keeper,	1 s.
The Jury-men,	8 s.
Oyer men, every one,	4 d.
For summoning and keeping the Jury,	4 s. 4 d.
Lights,	1 s.
Bar-keeper,	1 s.
Return of the postea,	2 s.
Also the Associate taketh in every cause where the Plaintiffs Attorney is not present, and of every Defendant which appeareth, and hath not his Attorney in Court, for a Warrant of Attorney,	
	4 s.

The Exchequer.

THIS Court hath formerly been a Court of much practice and in great esteem; but of late, since the Revenues of the Crown have been sold, there is but little businesse to what formerly, and very likely to be far lesse, when there will be little or nothing at all left of what related to the Crown, save onely the Customes, Inpost, Tonnage, and Poundage.

But yet of late the Court hath had much increase

of businesse, by reason of many Suits which are brought by Parsons and Vicars against their Parishioners for the detaining of their tythes, which course hath proved very successefull to them in recovering and obtaining their just rights and dues.

The chief Judges of this Court, are the Lord chief Baron, and three other Barons of the Coif, with whom also sits one other, who hath the name of a Baron, but hath no voice in Court, as to any businesse, save the taking accounts of Sheriffs, Auditors, Bailiffs, Receivers, &c. The subordinate Officers are :

1. The kings Remembrancer, now called the Lord Protectors Remembrancer, in whose Office are severall Attorneys.

2. The Lord Treasurers Remembrancer, and in that Office likewise severall Attorneys.

3. The Clerk of the Pipe.

The Controller of the Pipe, and severall Clerks there.

4. The Clerk of the Office of Pleas in his Office; there are likewise severall Attorneys.

5. The Clerk of the Estreats.

6. The forreign Opposer.

7. The Auditors of the Court, which were anciently many.

8. Tellers, and one of them in chief, and undertellers their Substitutes.

9. The Clerk of the Tallies.

10. The Chamberlain of the Court.

The chief Usher, and severall other Ushers.

The Usher and Porter of the Court, and Court-keeper.

The keeper of the Records of the late Court of Augmentation.

This Court of Exchequer, hath in it a diverse way of proceeding.

As

As first, There is a course of proceeding suitable in most things to the Common Law, proceedings in other Courts, and that is, of their (*Quo minus*) out of the Office of Pleas, which Writ was anciently to be granted to such party onely, who was either Tenant, or Debtor, or some wayes accountant to the king; and therefore the end of the Writ concludes that he is for default of the Defendant, giving him satisfaction, lesse able to satisfie the king; but at this day, the practice is grown generall in all cases almost, but more especially in *Wales*, where no Writ out of the Upper Bench, and Common Bench lies, save onely a *Capias ut legatum*; and this Writ which so far relate together, as that they both pretend to be by way of Prerogative for the king: The Rules formerly given for proceedings at Common Law in Upper Bench, &c. will serve you for this,

The Exchequer Chamber.

THIS Court is, as it were, the Chancery of the Exchequer, in which sits as the chief Judge, or Justicer, formerly the Lord Treasurer, and Chancellor of the Exchequer being assisted with the Lord chief Baron, and the Barons of the Coif; and now that there is no Treasurer, nor Chancellor, the Lord chief Baron, and the rest of the Barons, and the proceedings had there before them, do much resemble the proceeding in the Chancery, and therefore I refer you to what you will finde following, of the proceedings in the Court of Chancery, which may be some guide to you in this.

The whole practice and proceedings which are generally in use at the Exchequer Bar, do relate for the most part to the two Remembrancers of the Court, which as I told you before, were the kings, or States Remembrancer, and the Lord Treasurer, or Committee,

mittee, of the Revenue Remembrancer.

There hath been anciently very much businesse, and that very various in the kings Remembrancers Office, relating to the Debtors, Tenants, Farmers, Receivers, Accomptants, Bailiffs, and Sheriffs, for debts or duties due to the king, &c.

In the Treasurers Remembrancer were wont to be all licences of Alienation pleaded, and all processe to issue out for the fines not paid upon them, and also all processe for not payment of respite of homage, &c. And these severall Offices do in many things also follow the practice of the Common Law.

The differences between this Court and the Courts of Upper Bench, and Common Bench, in point of appearance at the beginning of a suit, take as follows :

In the Exchequer Chamber; the processe upon English Bill is *Subpœna*, Attachment, Proclamation and Commission of Rebellion.

If the Defendant appear, and no Bill be exhibited within four dayes after the return of the processe the Defendant may be dismissed with costs.

After the Bill is exhibited, the Defendant hath eight dayes after his appearance to answer, if he answer not by that time, a Rule of four daies more is to be given, and if he do not answer by that time, processe of Attachment may be awarded against him for his contempt.

If the Defendant demur, or put in an insufficient answer, the Plaintiff may put in his exceptions to the said answer, and move to have the bill, answer, and exceptions or demurrer set down to be read in Court, and upon arguing thereof, the Court give their opinions, whether such answer or demurrer be good or not, and award costs accordingly, and if the answer be adjudged insufficient, or the demurrer be overruled, then the Court doth order that the Defendant shall put in a further answer.

If a Bill be exhibited against a Peer of the Nation, there must be a Letter directed to him under the hands of two of the Barons, requiring his appearance, if he do not appear, then Processe of *Subpæna*, and after a *Distringas* or Attachment.

If the Bill be against a Corporation, Processe of *Distringas* must be made against them, their answer is without oath.

If a Bill or Petition be exhibited against the Lord Protector, The Plaintiff must attend the Lord Protectors Attorney with a Copy of it, and procure him to answer it, which is without oath.

When the Defendant hath answered, the Plaintiff may go to hearing upon Bill and Answer, if he will, if he do reply to the Answer, he must serve the Defendant with a *Subpæna* to rejoyne, upon Affidavit made thereof in the Term time, if the Defendant do not rejoyne, and joyn in Commission for examination of witnesses within four daies after the end of the Term, the Plaintiff may have a Commission *ex parte* to examine his witnesses.

After Processe served to rejoyne, and Affidavit made, as aforesaid, both sides may examine witnesses in Court, if they will, giving the names of their witnesses each to other, or to their Attorneys in Court, in convenient time, before their examination.

Where the Plaintiff hath examined his witnesses, he may move for Publication, and a Rule is given ordinarily of a week in Term, and if no cause be shewed according to the Rule, then Publication to passe and the cause to be set down for a hearing.

When the cause is set down to be heard, the Plaintiff must serve the Defendant with Processe of *Subpæna* to hear Judgement; And if at the day of hearing the Defendant do not appear upon oath made of the service of the said *Subpæna*, the Court will cause the
 Defendants

Defendants answer to be read, and so proceed upon the Plaintiffs proofs, but the Court doth usually in such case, give the Defendant a day to shew cause why a Decree should not be made against him.

If the Defendant tend the hearing, and the Plaintiff make default, the Defendant is dismissed with costs. For breach of Decrees, and other great contempts, the Court doth award Attachments, or a Messenger, or a Serjeant at Arms, as the cause requireth; And when the Defendant is brought in, he is committed to the *Fleet*, or puts in security to attend untill he be examined upon Interrogatories and licensed by the Court to depart; and if he deny the contempt, the Prosecutor may examine witnesses to prove it either in Court, or by Commission; If by Commission, the Defendant may joyn to see an indifferent examination, but not to examine, unlesse the Court order it, and if the contempt be proved, the Court doth punish it with imprisonment, fine, and costs to the Prosecutor; If it be not proved, the Defendant is to be dismissed with costs. In case of ordinary contempts for not appearing, or not answering, the costs are ordinary, *viz.* for every Attachment, ten shillings; for every Commission of Rebellion, three pounds six shillings eight pence, which is to be paid before the contempt be discharged. In case where any bill of costs is to be taxed, the Attorney is to see it before it be rendered to the Baron to be taxed.

The Fees in Court upon the Proceedings by English Bill;
together with some other Fees.

	l.	s.	d.
For a Subpena,	0	2	6
For an Attachment,	0	2	6
For a Proclamation and Attachment,	0	2	6
For a Commission of Rebellion; to take an Answer, or to examine witnesses,	0	18	8
For the appearance of every person,	0	0	4
Copies of Bills, Answers, &c. by the Leaf,	0	0	8
For Ingrossments by the Lease,	0	0	8
The Attorneys Fee for every Term.	0	3	4
For all Inrollments for every Roll,	0	13	4
For every speciall Writ, viz. Writ of Priviledge, In- junction, Supersedeas, Extent, Scire facias, Fieri fa- facias, Certiorari, &c.	0	7	10
For every Writ of Venire facias, and Writs of At- tendance,	0	2	6
For every Distringas jurif.	0	4	0
For every rule to plead or answer,	0	1	0
Filing each Bill,	0	2	0
For entring and inrolling a Recognizance,	0	5	8
Drawing of Orders, pleas, &c. by the Leaf,	0	1	0
To the Baron for allowing every Bill	0	2	0
To the Baron for signing every Common Order,	0	2	0
For signing a Decree to each Baron,	0	6	8
To each of their Clerks,	0	2	0
For every Affidavit sworn before him,	0	1	0
For every Deed acknowledged before him,	0	6	0

To

To his Clerk,
For every Bill of costs taxed,

l.	s.	d.
0	2	0
0	2	0

Where an Under Sheriff is to passe his accompt in the Exchequer, the charge is as follows; some difference there may, as the accompt may lie, but not much.

	l.	s.	d.
F irst for the Taley upon payment of proffers,	0	2	8
For the entry of the same Taley.	0	1	4
Where the Sheriff is dead, for the <i>Diem clausi extremum</i> , whereby upon accompt, Execution is to be returned,	13	4	
For the Warrant of Attorney	1	0	
For the entry thereof,	0	8	
For the Ushers Fees and the poor mans Box,	13	4	
To the Controller of the Pipe,	16	8	
To him more, in regard of, &c.	3	4	
To the Clerk to the Controller for summons in regard of, &c.	5	0	
To the Clerk of the Pipe in part of his fee,	1	0	0
To the Lord Treasurers Remembrancer,	13	4	
To the forreign Opposer for charging of the green Wax, and making the Scrowle thereof,	1	6	8
To him for allowance of the wages of the Justices of the Peace.	18	0	
To the Clerk of the Estreats for the Portage of Books,	} As you can agree.		

To

To the under Clerk of the Pipe for } the like,	In like man- ner.
For the President of the Forreign } Account,	In like man- ner.
The Fee in regard of the Justices of Assize for their Diet,	10 l.
To the Attorney for the Entry thereof, and other Petitions,	2 l.
To the said Attorney for his ordinary Fee for the whole year, to receive the VVrits and Precepts, &c.	1 l. 6 s. 8 d.
To him in regard of, &c. for every Term during the account till finished,	3 s. 4 d.
To his Clerk in regard of, &c.	10 s.
The Copies of the Sheriffs, Seisures, according to the number of them,	
The old Seisures, for each,	1 s.
The new Seisures, for each,	1 s.
To the Clerk in regard of, &c.	3 s. 4 d.
To the Remembrancers Office, for each thereof, and for joyning the tales of Professors,	3 s. 4 d.
On the Lord Treasurers Remembrancers side for the like,	3 s. 4 d.
For allowance of the same tales of payments of mo- ney in the receipt of the Exchequer,	1 s. 4 d.
For the joyning of the same.	
For allowance of the same,	1 s.
For every day that is given to the Sheriff, in respect of his Accounts,	6 s. 8 d.
For the Entry thereof,	2 s.
To the Usher for Proclamation, when the Sheriff is said to be cast out of the Court,	2 s. 6 d.
For the <i>Quietus est</i> , the making and allowing of the same,	1 l.
For the Baron, for his Fees, for taking and allowing of the forreign Accounts,	6 s. 8 d.

To

To the same Baron for examining the Sheriffs Schedule, 6 s. 8 d.

The ordinary charge of passing another Account.

First, for the Delivery and Receipt of three Certificates,	1 s.
For delivery of the Kings part of the Books of Extent to the Auditor,	6 d.
To the Auditors man for a Bag,	6 d.
For a VVarrant of Attorney,	8 d.
To the Teller for receiving of the Money, and making a Bill thereof,	4 d.
To the Auditors man for allowing the Certificate,	1 s. 6 d.
To the Auditors man for ingrossing the Accompts,	4 s.
To the Barons man for receiving and allowing the VVarrant of Attorney,	2 s.
For entring the Accompts on the kings Remembrancers side,	1 s.
For the like entry with M.	1 s.
For joyning of their two Talies,	8 d.
For the <i>Quietus est</i> ,	3 s. 4 d.
For entring the <i>Quietus est</i> ,	2 s.
For the Attorneys Fee,	3 s. 4 d.

Thus much shall suffice to have spoken of the Exchequer and his Proceeding, and Fees relating to the Sheriffs.

In

In the next place take the Fees of the Sheriffs themselves, as in the execution of their Office.

Inprimis, For the return of a *Nichil*, or *Non est inventus*, 4 d.

But in *Scire facias* they take, 1 s.

For making a Warrant upon ordinary Proccesse, if it be directed to the ordinary Bailiffs, then for every name, 4 d.

In many Countyes, they take far more, in some 16 d. in some more.

If the Warrant be directed to a speciall Bailiff, or Bailiffs, then for every name, 2 s.

For the arrest of every Defendant, 1 s.

This should be paid by the Plaintiff.

For making the Bond of appearance, wherein the Defendant, with his sureties, is bound to appear in Court, at the day of the return of the Writ, 4 d.

They take 12 d. and more in some places.

For the return of a *Cepi corpus*, 4 d.

For the return of an *Exigent*, 1 s.

For the return of a Proclamation, 1 s.

For the return of a *Venire facias*, 1 s.

They now take in most places, 2 s.

For the return of a *Habeas corpus*, or *Disstringas*, 2 s. 4 d.

For a Replevin, either in the County or otherwise, 2 s.

For the return of a *Retordari*, 2 s.

For the return of an *Accedas ad Curiam*, 2 s.

For the return of a *Disstring. nuper Vicecomitem*, 2 s.

For the allowance of a *Superfedeas*, if it be after return of the *Exigent*, 1 s.

They pay more now in many Counties.

For the executing of a Writ of inquiry of waste,

For the executing of a Writ of Inquiry of damage in trespassse,

Trespasse upon the Case, &c.

For the executing of a *Liberatio* upon a Statute of Recognizance,

For the Execution of an *Habere facias possessionem*, or *Seisinam* upon an *Ejectione firme*, a Writ of Right, of making Partition, &c. Dower, &c.

As you can
make a-
greement
with the
Sheriff.

For the executing of an *Elegit*, and for the Inquiry upon it.

For the executing of a Writ of Forcible Entry, or holding with force, whereupon the party moved, is to be restored by the Sheriff to his possession.

For the executing of a Writ of Inquiry upon assault and battery.

Upon a Rescous, and many other, too long here to insert. The like as before.

For the returning of a *Mandavit Ballivo Liberatis*, &c. 4 d.

Upon the serving of an Execution for money, either debt or damages.

The Sheriff hath poundage allowed him, and is a generall Rule allowed by the Statute in *Q. Eliz.* time. See the Statute what it is.

There are many other Fees incident to the Sheriffs in many Actions, and otherwise, which in respect the Actions themselves are most of them out of use, are not so well known; and indeed, a man had need to be well experienced in the Office of an Under-Sheriff, to know both what Fees he ought to receive, and what he ought in the Exchequer to pay.

The Court of Upper Bench comes next to be treated of, wherein we shall be the briefer, in respect that many Action treated of at large before, in the Court of Common Bench, are here also brought, and all that differences their proceedings, is for the most part, matter of form.

THe Court of the Upper Bench, consists of a chief Justice, and three other Judges.

The subordinate Officers are as follow :

The chief Clerk of the Court, or Master of the Upper Bench Office, whose place is executed by his Secondary for the most part, or his Clerks under him, who write all Pleadings, and Declarations, and other proceedings upon Record, and are accountable to him for the same.

His Deputy also signes all *Latitats*, which is the first Writ whereby a suit is commenced : and Writs of *Alias*, *Plures*, *Capias*, *Elegis*, *Habeas corpus*, *P. o. cedendo*, *Habere facias possessionem*, *Certiorari*, *Distringas Ballivo*, *Distringas* against late Sheriffs, *Retorno Habendo*, *Capias in Writhe nam*, second deliverance, and some others. He also keeps the Remembrances of all Records, whereby you may finde out any Record with little trouble, especially if you know the Term when it was entred, and the Attorneys name : and also all Writs returned, and *Posseas*, and Writs of Error are kept, and filed in his Office, and also common bails, and especiall bails, after they are accepted of by the Plaintiff or his Attorney, are likewise filed and entred upon Record in his Office.

Secondly the *Custos Brevium*, his Office is to file

all originall Writs, and other Writs, wherein you proceed against any person you intend to outlaw. And also makes up all Records of *Nisi prius* for trialls at the Assizes in the severall Counties, and hath severall Clerks under him, who write the same; but many times the Plaintiffs Attorney, or the Defendants Attorney, if you go to triall by *proviso*, write the same, that he may dispatch his Clients businesse the sooner, for which you pay for every presse, which is to contain sixty lines, 6 s. 6 d.

The Secondary to the chief Clerk, he always attends the sitting of the Court, for to examine businesse, which is referred to him by the Judges; and afterwards makes his report thereof, how the case stands. He also signes all Judgements, and taxes costs thereupon, and gives all Rules to answer and reply, and to go to triall by *Proviso*, and many other; and usuallly resolves all doubts and questions of the other Clerks. And if any difference arise between any of the Clerks, for matter of practice, it is usuall with them that are fair practicers, to refer the same to him for to determine, and not to trouble the Court with unnecessary motions, and expend their Clients money in vain, which may that way be saved.

The Clerk of the Papers, his office is to make up all speciall Pleadings and Demurrers, which the Plaintiffs Attorney most commonly speaks for, and afterwards, by virtue of this Office, gives a Rule upon the side of the Paper-book, for the Defendants Attorney to bring the same to him again to be entred within four dayes, or else judgement to go by default.

Keeper of the Files of Declarations, with whom after they are ingrossed in Parchment, and continued on the back, from the Term you declare, until it come to an Issue, are filed.

Keeper

Keeper of the Signe and Seal for the Bills of *Middlesex*, who keeps a Book, containing the Plaintiffs and Defendants names, and where you may search for any Appearance, or for any Writ that is taken forth.

The Clerk of the Rules, whose office is to attend the Court, and take short notes of all Rules and Orders that are made in Court (except those which belong to the Crown office) and afterwards draws the same up, and enters them in a Book at large, for which you pay eight pence, and for the copy of every Rule four pence, if it be of the same Term, otherwise you pay eight pence. He also files all *Affidavits* that are used in Court, and hath the benefit of making copies of them, for which you pay for each sheet four pence, and with him you are to give all Rules of course; as Rules upon *Ceji corpus*, *Habeas corpus*, for a *Procedendo*, *postea's*, Writs of Inquiry, and such like.

Phillizors, one for each County in *England*, who make out all Writs, wherein you intend to proceed by Originall, and so to the Outlawry, except the Originall it self, which you are to bespeak of the Cursitor of the County, where you intend to lay your Action, in such manner as you bespeak Originalls, which are made in the Common Pleas. And they have the benefit of all Writs and Entries thereupon, and allow the chief Clerk nothing for the same.

The Marshall of the Upper Bench, who hath the custody of all prisoners who are sued in the Court, like to the Guardian or Warden of the *Fleet*, which is a prison properly belonging to the Common Bench and Chancery; and every one that is sued and arrested in this Court of Upper Bench, is supposed to be in custody: for you cannot declare against any man, who is arrested upon mean Processe, in any County or City, and he remain in prison there, for

want of bail, untill he be removed by a *Habeas corpus*, and always either he himself, or his Deputy, or servants, attend the Court for that purpose, to take prisoners, who are committed to their custody.

Clerk of the Errours, he allows all Writs of Errour, and makes *Superfedeas* thereupon, into what County you please to have them.

Cryers, who always attend upon the Court, either to call Non-suits, give Oaths to Witnesses, and Jurymen of trialls, or to any others whom the Judge shall direct, and at the end of every Term, they do adjourn the Court.

Porter, who is to bring the Records out of the Office, when they are to be used in the Court.

This Court of Upper Bench, holds plea in all Actions of Debt, Detinue, Covenant, Account, and all Actions of the Case, either upon promises, or for scandalous words, or for speciall nuisance, &c. Trover and Conversion, and many other like, &c.

The course of proceeding there is by way of *Latitat*, as their first Processe, if the Action be brought, or the party to be arrested in any other County then *Middlesex*.

If in *Middlesex*, then you take out a Bill of *Middlesex*, with any Clerk of this Office, for which you pay 1 s. 6 d. and then you are to carry it to the under-Sheriff of *Middlesex* his Office, who is to make out a Warrant upon it, for which he hath 4 d. and then you imploy what Bailiff you think fit, for the arrest, except your Warrant be directed to the Bailiff of any particular Liberty, and then you are to imploy one of his Bailiffs.

If it be a *Latitat*, it supposeth a Bill of *Middlesex*, and that the party cannot be found in the County of *Middlesex*, as it appears by the latter end of the Writ, where it is said, the Sheriff of *Middlesex* returns
that

that he is not found within his Bailiwick, but that he lies hidden in another County, and therefore command is given to the Sheriff of that other County, that he take him, &c.

This Writ or Bill of *Middlesex*, I conceive, is in the nature of the Originall in the Common Pleas, which warrants the *Capias*, and haply may have very anciently been in use for that purpose, for that otherwise it were vain to insert those words of the Sheriff of *Middlesex*.

The Form of a Latitat is as followeth.

Latitat :

THe Keepers of the Liberty of England, by Authority of Parliament, To the Sheriff of E. greeting, Whereas we have lately commanded the Sheriff of the County of *Middlesex*, that he should take A. B. if he might be found in his Bailiwick, and him safely keep, so that he might have his body before us, in the upper Bench at Westminster, the Thursday next after fifteen dayes of Easter, to answer C. D. in a Plea of Trespasse; And the said Sheriff of *Middlesex*, at that day returned unto us, that the said A. B. is not found in his Bailiwick; whereupon, on the behalf of the aforesaid C. D. in the Court before us, it is sufficiently testified, that the said A. B. doth lurk and sculk in your County; therefore we command you, that you take him, if he shall be found within your Bailiwick, and him safely keep, so that you may have his Body before us in the upper Bench at Westminster, on Wednesday next after three weeks of Easter, to answer the said C. D. in the Plea aforesaid, and that you have there then this Writ; Witnesse H. Rolle at Westminster, the seventeenth day of April, in the year of our Lord God, 1651.

The Compleat Attorney.

This Writ is usually 4 s. 1 d. some take 5 s. 1 d. And if you cannot arrest the party upon this, then you may have it renewed, as followeth.

Alias Capias.

THe Keepers, &c. to the Sheriff of L. greeting. We command you, as formerly we commanded you, that you take A. B. if he shall be found within your Bailiwick, and him safely keep, so that you may have his body before us in the upper Bench at Westminster, on Saturday next after the morrow of the Ascension of our Lord, to answer C. D. in a Plea of trespassse. And that you have there then this Writ; Witnesse H. Rolle at Westminster, &c.

VVightwick.

This VVrit is 1 s. 1 d. but they usually take 2 s. 1 d.

The Plures Capias.

THe Keepers, &c. To the Sheriff, &c. We command you, as many times we have commanded you, that you take A. B. &c. as in the Writ next before.

This VVrit is likewise 1 s. 1 d. but they take 2 s. 1 d.

Bill of Middlesex.

Middlesex ff. It is commanded to the Sheriff, that he take A. B. if, &c. and him safely, &c. So that he have his body before the Keepers of the Liberty of England, by Authority of Parliament in the Upper Bench at Westminster, on VVednesday next after the Moneth of Easter, to answer C. D. of a Plea of trespassse, and that he have here then this Precept, &c.

by Bill

VVightwick.

These

These VVrits you may have renewed every Term, untill you get the party to be arrested. But if the *Latitat* remain unrenewed for five Terms, after you have taken it out, then you must have a *Latitat de novo*, for that you cannot renew the old.

Upon any of these Processes if any of the parties to be arrested, dwell within a Liberty, you must get the Sheriff to return a *Mandabo Ballivo* to your Processe, and upon that the course is to have a *Non omittas*, &c. for which you pay 2 s. 4 d.

VVhereupon this, or any the other VVrits, the party or parties be arrested, and have put in bond for his appearance to the Sheriff, you must pay the Sheriff 4 d. and he will return you a *Cepi corpus*, upon which, if the party do not appear at the return of the VVrit, you may give the Sheriff a Rule to bring in his body, on pain of 40 s. &c. which costs 4 d. and then, if he do not come in and appear, you may have a *Habeas corpus* upon the *Cepi corpus*, which costs 2 s. 4 d. If the Sheriff will not return this VVrit of *Habeas*, you may amerce him as before; if he doth return the VVrit, and brings not in the body, he can return nothing but *Languidus in prisona*; and upon that you may have a *Duces tecum licet languidus*, &c. upon the like price, or else after the party is arrested, you may have a *Habeas corpus*.

At the return of all or any of these you may amerce the Sheriff, and he shall pay it after those Rules given in the Upper Bench.

If you will extreat your amerciements into the Crown-office, the charge of every Rule extreated, is 2 s. 4 d. unextreated, 4 d. and in this course you may both amerce the Sheriff, and prosecute till such time as he doth appear, but if there be any great amercement, the Defendant will appear for fear the Sheriff sue his bond: And after the Amerci-
ments

ments are returned into the Crown-Office, if they be not certified and returned into the Exchequer, which is once in every half year, where they are extreated before that time, if you be sued upon the Sheriffs bond, you may upon motion of the Court, if the Plaintiffs Attorney (to whose Client the Sheriffs bond is commonly assigned) will not consent otherwise, that you are content to appear, as of the same Term the first Writ was returnable; and to accept of a Declaration, and not to delay the Plaintiff in his suit: the Court will usually order the suit upon the Sheriffs bond to stay, or if the Amerciements be extreated, then upon the same offer, and also to take off those Amerciements, the Court will order the like.

And when any one intends to appear, he must file a bail with the Master of the Office, fairly written in Parchment, the form whereof is as follows.

If it be a common bail thus :

A. B. of C. in the County of D. Yeoman, delivered into bail upon a Capi corpus.

To John Doe of London, Yeoman, and Richard Roe of the same, Yeoman, at the suit of E. F.

If speciall bail upon a *Habeas corpus*, then you must say (such a one) naming the Plaintiff, is delivered into bail upon a *Habeas corpus*, to such persons, naming his bail (instead of *John Doe*, and *Richard Roe*) at the suit of the Plaintiff, in the Plaint not naming the Defendant, as in the common bail, which must also be filed with the Master of the Office.

In what cases you are to require, and may stand upon good Bail.

IF the Defendant do appear, and he stand indebted to your Client, either by bond, bill, or otherwise, to the value of 20 l. or 10 l. you may force him to put in good bail if you mistrust his sufficiency.

But if it be in an Action of the Case, for words, though the party be nothing worth, and you are likely to recover great damages, yet can you very hardly hold him to good bail: yet in some cases it hath been observed, that good bail was required, as where one had made a Libell against another, who was a Magistrate.

In any Action of *Ejectione firme*, and in an Action of trespassse, good bail is not insisted on, nor required, except in some speciall cases, then the Court will order that there be speciall bail.

Nor is there good bail required against Executors or Administrators, in any Action brought against them, unlesse in such case where you can directly prove they have wasted the goods of the Testator.

If bail be put in, either common or speciall, at another mans suit, a stranger may upon this bail, put in a Declaration, but then he must declare of the same Term the bail was put in, which is not used in the common Bench. But the party at whose suit the Defendant was arrested, may declare the next Term after the Defendants appearance upon the bail.

But if it be especiall bail that he put in, no stranger shall take the benefit of it, although he declare of the same Term.

If the Defendant appear in his proper person,
you

you must declare within three dayes, otherwise he will have costs.

If you have declared, and do not call for answer, nor enter the Action within three Terms after the appearance of the Defendant, the Plaintiff shall be nonsuited, and the Defendant shall have costs.

And if you arrest one in the County, upon mean Proesse, and he is in the Sheriffs custody there for want of bail, for the space of three Terms, and you do not remove him into the custody of the Marshall, where he must be, before you can declare against him, the party arrested may have a *Superfedeas*, and file common bail.

The Declarations are usually drawn by the Clerks of the Office; for they that are Clerks of the Office are to do the businesse of those which are Attorneys at large, and their names are onely used as Attorneys but those Clerks are in right of their being Clerks of the Office, Attorneys of the Court.

Their manner of practice is something different, in respect of the delivery of Declarations, from that in the Common Bench.

In the Common Bench, the Plaintiffs Attorney or Clerk, hath the benefit of both the Copies of the Declaration, both on the part of the Plaintiff and Defendant.

But in the Upper Bench, the Declaration being drawn by the Plaintiffs Clerk, the Defendants Clerk calleth for it, or else it is delivered unto him, and he maketh a copy of it, and hath the benefit of it, and then the next Term after, or so soon as the Plaintiffs Clerk calleth for answer, is to plead, or to confesse the Action, or let it go by default, &c.

Their Declarations that are drawn, they ingrosse severally in pieces of Parchment, and upon the back of them they enter their continuances, from the

Term

Term that is within written, unto the very Term that they either confesse the Action, or plead to Issue, and that the Issue be entred upon Record, and after Issue is joyned, many times they defer the entring of the same, till the cause be tried, which is otherwise in the Common Bench, which is beneficiall, both to the Plaintiff and Defendant, being they may in the mean time agree the businesse, and so save that charge.

In their Declarations, they begin with the name of the Plaintiff, and say, that he complains of the Defendant, very seldom naming of what place, &c. unlesse upon a Bond where the *Alias dictus* must be observed, in the custody of the Marshall, &c. for so the Declaration supposeth every person they declare against.

When they come to mention the Bond, Indenture, or Bill, if in an Action brought upon any Specialty, there they have (*Profert hic in Curia, &c.*) in the middle of their Declarations, whereas in the Common Pleas, they conclude their Declarations with it; at the close of their Declarations, they adde underneath,

Pledges of Prosecuting { John Doe,
Richard Roe.

Next that they adde { J. B. for the Plaintiff.
C. B. for the Defendant.

THe many and severall Actions of the Case before mentioned in the practice of the Common Pleas, are much used likewise in the practice of this Court, and in those Actions they may proceed to Outlawry by Originall, and so through their Philli-
zers

zers Office, in which cases, or in trespasse, or trespasse of assault and battery, if a man be outlawed in that Court, he is half undone, if he be a poor man; for besides that it costs him 6l. 13 s. 4 d. or upwards, to reverse the Outlawry, he must although he live an hundred, or an hundred and fifty miles distant from *London*, come in person (if he be able) to reverse it, and besides must procure good bail; and in case he be impotent that he cannot travell, then there must be *Affidavit* made thereof before a Judge, which done, he may reverse it.

One may proceed to Outlawry in this Court, as well as in the Common Pleas, in all cases, except in these four.

1. Debt. 2. Detinue. 3. Covenant. 4. Accompt; but it is seldome made use of but upon good occasion, that is to say, when the Defendant hath a good personall Estate in debts, cattell, or stock in his grounds, and is hard to be taken and arrested; for otherwise Outlawries are but meer scare-crows, to disable both the Plaintiff and Defendant, in putting them to unnecessary charge, whereas upon a *Latitat*, you may procure a man to be arrested presently, and make him put in good bail, which is all you can do upon an Outlawry, after three Terms space. And besides, upon a *Latitat*, you may declare against the Defendant, in as many Actions as you please; whereas in the Common Pleas, you must have for every Action, one Originall, and if it be a debt which exceeds forty pounds, you must pay as before is told you, 6 s. 8 d. fine, and if 100 l. you pay 10 s. fine, and so proportionably; and as soon as you bespeak your Originall, before you have any benefit of your suit, whereas no fine at all is paid in the Upper bench; and in the Upper bench, the Plaintiff hath longer time to declare, then is allowed in the
Common

Common Pleas ; (if the Defendant do not appear in person) and then you must declare within three daies after.

When the Plaintiff and Defendant are at issue, the Defendants Clerk hath the benefit (as before of making the Declaration) so of making the Copy of the Issue for the Defendant, which is otherwise used in the Common Bench.

If there be speciall pleadings in any Action by the Plaintiff, or Defendant, which either comes to Issue, or that there be a Demurrer, then they carry the whole book to the Clerk of the Papers, who giveth a Rule to the Defendant in the Margin of the book, to joyn in Issue or in a Demurrer, and he maketh up the books, and is paid eight pence a sheet for the same, which is otherwise in the Common Pleas, for there the Plaintiffs Attorney hath that benefit.

The Clerks of the Office are to accompt with the Master of the Office after the end of every Term, for all Writs of Entries, &c. which they have had of that Term so proceeding.

After Verdicts, and that they have a *Posseas* returned, and that the Master of the Office hath signed costs (which he doth, as he doth all other businesse by his Secondary) then they enter up their Judgements, every Clerk his own, and so he maketh out his Executions, either against the body, which is commonly called a *Capias ad satisfaciend.* or else against the goods, which is commonly called a *Fieri facias*, or else against the lands and goods, which is called an *Elegit*; but if you once charge the body in Execution, you have no remedy against the goods or lands.

If it be an Issue of any former Term, that is entered upon the Roll, or of the same Term, then if they will have a Record of *Nisi prius*, they must have it

it made by the *Custos Brevium* of that Court, who keepeth particular Clerks for that purpose; for they are to pay him for them, although for expedition the Attorney or Clerk most usually makes them himself, and then the *Custos Brevium* seals them.

This Court of Upper Bench holdeth Pleas of the Crown, and to that purpose there is an Office called the Crown-Office; and the Master of it called the Clerk of the Crown; and here may be brought Inditements for all manner of Treasons, Murder, Felony, Breaches of the Peace by Battery, &c, Breach of the good Behaviour, for Perjury, all publike Nuisances, Appeals in case of Murder may come, and here likewise Informations upon penall Statutes are brought, and here issue out *Certioraries*, to remove Inditements from private Sessions, and hither are all Convicts certified.

They have belonging to this Office, a Secondary, who sits in Court, and takes notice of what Rules are made on the Crown side. They have likewise severall Attorneys of that Office, who have the businesse of the County, as to that Office, divided amongst them, who intermeddle not with any thing relating to the Court, other then in their own Office.

How to sue upon a Statute Staple.

IF you would sue forth Execution upon a Statute Staple, go to the Clerk of the Statutes, and shew him your Statute, and he will make you hereupon a Certificate, which being made and sealed by him, carry it to the Clerk of the Crown, (which is the Office whence all Patents specially issue forth) and upon the delivery of the Certificate to him, he is to make you your Extent, which you must after deliver
unto

unto the Sheriff of the County whete the land lies; who will by virtue thereof, impanell a Jury to inquire and extend lands, goods, and chattells of the Cognizor, and may by virtue thereof, apprehend the body, if, &c. The lands being thus extended into the Kings hands, the Sheriff may keep untill you bring your *Deliberate* which you are to have (upon your Extent returned) from one of the Clerks of the Petty-Bag; but it behoveth you to be very carefull how you sue forth your *Liberate*, and that you do it not before you have fully informed yout self what lands or goods there are in any other County, that you may extend, whereby fully to satisfie your Statute; for if you once execute your *Liberate* upon that which was first extended, you shall never have Execution of more, although you make an after discovery. And you are to deliver your Statute into the Petty-Bag Office, before they will make you your *Libere*.

How to sue upon a Recognizance acknowledged before one of the Masters of the Chancery.

WHere you will sue upon a Recognizance, you must bring it to one of the Clerks of the Petty-Bag Office in Chancery, and he will make you out two *Scire facias*, directed to the Sheriff of *Middlesex*.

The first returnable of a Return past, and the other bearing *Teste* of the Return of the former; and returnable at a day to come, which you must get the Sheriff of *Middlesex* to return; and having them returned, you are to bring them back to the Clerk of the

Petty-Bag Office, and then retain one of the Clerks for you, and give the Defendant day to appear.

At which day, if he appear, the Plaintiff is to declare, and the Defendant is to answer, and so proceed to Issue, and upon the Issue joyned, you may have the whole proceedings ingrossed in Parchment, and by *Mittimus* sent into the Upper Bench or Common Pleas, or else the Lord Keeper, or Lords Commissioners for the Great Seal, for the time being, may deliver it so ingrossed into either Court without *Mittimus*, which is said to be delivered, *Propria sua manu*, where the Issue shall be tried, and Judgment given; for in the Chancery no Issue can be tried. But if the Defendant appear not, you shall have Execution by default, which course is indeed most usuall.

How to prove a Will, in case the party be present, the Inventory not exceeding forty pounds.

First, you are to bring in your Will, under the hand of the Testator, and witnesses names, and take oath, that that is the last Will for ought you know; and in case the party live in the Countrey, there must a Commission issue forth to that purpose, which being returned, you must retain a Proctor, and he will sue it out for you, the charge follows, but it is alterable according to the length or shortnesse of the Will.

Inprimis, for registering of the Will,
For ingrossing the Will,
For the Register, for his hand to the same,

1 s. 6 d.
6 s.
12 s.
For

The Complot Attorney.

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For the Seal and Probate of the Will,	6s. 8d.	
The Proctors Fee and the Prox.	}	4s. 8d.
For proving the Will,		
For ingrossing the Inventory, and exhibiting the same,	}	<i>According as you can agree.</i>

These Fees would be far lesse, could the Registers Clerks be confined to walk by what the Statute directs, and in some very short Wills, they are lesse then what is above set down.

The Dutchie Court.

THIS Court, before the Sale formerly made, and the large Grants of the Dutchie lands, was much used in relation to suits between the Tenants of those lands, and also against accountants and others for the rents and profits of the lands, and is a Court of Record, wherein are Pleas both reall, and personall, as also mixt pleadings, relating to the Dutchie lands.

The Chancellor of the Dutchie is the chief Judge of this Court, and next to him the Attorney of the said Court, who in all difficult cases in point of Law, is usually assisted by two Judges of the Common Law out of one Court or other, to decide the matter or question in Law.

There is one chief Clerk or Register of the Court, to whose office it properly belongs, to have the keeping of all the Rolls and Records of the Court, and also of the proceedings therein.

There are divers Auditors of this Court, of which there are two more especiall then the rest. The one whereof, his Office extends to all the Dutchie lands on this side *Trent*, and the other for the lands beyond *Trent*. To those Auditours doth belong the keep-

ing of the Kings Evidence ; as Leases and Grants of the Dutchie-land, as well of the Possessions and Copyhold, as Fee-simple, and Fee-farm.

Although there be divers Surveyors for the Dutchie-land, for the surveying of it, yet do they not keep any Record to that purpose, unlesse some short draughts of their own framing.

Thus much for Courts of Record at *Westminster*, which are for the Common Law practice ; come we now to the Court of Equity, which in many cases abates of the rigour and severity of the common Law, and is called,

The High Court of Chancery.

IN this Court, the Lord Chancellor, or Lord Keeper, of the Great Seal, were formerly, and now the Commissioners of the Great Seal are the chief Judges ; and in this Court, they, and in their absence, the Master of the Rolls, do make Orders and Decrees.

The subordinate Officers of this Court are many.

The twelve Masters in ordinary, which are Assistants to the Commissioners, and sit with them, and to whom References are made, and before whom *Affidavits* are made, and Deeds acknowledged, and Recognizances, &c.

The Register of the Court, who hath divers under him, that sit in Court, and take notice of all Orders, Decrees made in Court, and accordingly, afterwards draw up these Orders, and enter them, and file them.

The six Clerks, in whose Office all proceedings upon Bill, and answer unto the very Decree, and after Decree are acted, and from whom likewise issue some Patents

Patents as for pardon of men for chance-meddley, Patents for Embassadors, Commissions for Bankrupts; and these by their Clerks, of which each six Clerk keeps a set number.

The Cursitors of the Court, who were incorporated by *Q. Elizabeth*, by the name of the four and twenty Cursitors, amongst whom the businesse that lies in the severall Shires, is severally distributed. These make all Originall Writs in the Chancery, which are returnable in the Common Pleas, and all Writs of Entry and Covenant.

The Register is a place of great note in this Court, and hath severall Registers under him, who sit in Court by their turns, and take notice of all Ordes and Decrees made in Court, and accordingly draw up the Orders, to which you must have a Registers hand, and then you must enter it there, and in that Office likewise they file the Reports of the Masters. The Masters of the *Sub pœna* Office. The Clerk of the *Affidavits*, where you file such *Affidavits* as you use in Court.

The Clerks of the Petty-Bag, who have many Clerks under them, and these Clerks have much variety of businesse that comes through their hands, and requires very much knowledge and experience for the managing of.

This Office hath the making out of all Writs of summons to the Parliament.

To this Office are all Offices that are found *Post mortem*, brought to be filed.

In this Office are all Pleadings of the Chancery concerning the validity of any Patent, or other thing whatsoever, which passeth the Great Seal.

And these Pleadings were formerly in *Latine*, although most of the rest of their proceedings were in *English*.

If any question arise about the acknowledgement of any private Deed between subjects, which is acknowledged in Chancery, before the Lord Keeper, the Master of the Rolls, or any of the Masters in Chancery.

All Statutes and Recognizances taken before any Officers of this Court, to that purpose deputed, are here prosecuted and transmitted hither.

In these Offices are all suits for or against any person privileged in the Court.

It is likewise a hand whereby to transmit divers things, from the riding Clerk; and the Inrolment Office, to the Chappell of the Rolls.

The Examiners are Officers of this Court, who take the Depositions of witnesses, and are to examine them, and to make out copies of the Depositions.

There are likewise Clerks of the Rolls, who sit constantly in the Rolls to make searches for Deeds, Offices, &c. and to make out copies.

The Usher of the Court, who hath the receiving and custody of all Moneys, ordered to be deposited in Court, and payeth it back again by order.

The Serjeant at Arms, who carrieth the Mace before the Commissioners, and to whom any person standing in contempt, are brought up by his Substitutes as prisoners.

The Warden of the *Fleet* attends likewise this Court, to receive such prisoners as stand committed by the Court.

This Court consists of a double power, ordinary, as in the case of *Scire facias*, to repeal Patents in cases of Traverse, Endowment of a Woman, and the like, and herein the Court is limited, and confined to the Rules used in the common Law.

The other is extraordinary, and unlimited, which is in cases of equity, wherein relief is to be had by

by a Suit here, by way of Bill and Answer.

By the power of this Court, are issued forth Commissions for charitable uses, Bankrupts, and Sewers.

Here in this Court, in some cases, Commissions have been granted to examine wastes, to set out meet wayes for passages, to prove a childe legitimate, to prove customes, and to examine witnesses, *in perpetuum rei memoriam*.

It proceeds by way of Bill and Answer, in many cases this Court will give relief against; besides, and beyond the Rules of the common Law, some whereof follow: As where a charge lies upon one man alone, by the common Law, where, in equity, others ought to contribute a part to this charge, here in this case, the Court will give relief.

So likewise will the Court relieve one against another who had falsified and broken his trust with him.

It gives relief against the extremity of an engagement, where either the engagement is without any consideration, unreasonable, dishonest, or discharged; or where there hath been either fraud, force, or the like, used to procure the thing to be done.

Where by a Law a man cannot be compelled to perform an agreement, this inforces it.

It inforces the inrolment of a Deed, if need be.

This Court will restrain other Courts that take upon them a greater Jurisdiction then properly they have, and removes the suit into this Court, which is done by *Certiorari*.

This Court will reduce the generall customes of a Mannour to a certainty between the Lord and Tenants, or the Tenants themselves.

It serves to recover land or money given to charitable pious uses, and misemployed.

It inforces the husband to give his wife Alimony.

Where Creditors are unreasonable, this Court inforceth them to take a reasonable composition of the Debtor, he being disabled.

Where Freehold or Copihold land are confounded, it will distinguish it, or if it be lost, it will give a recompence for it.

This Court will ascertain the Fines of Copiholders.

This Court, (where Executors, or others, have money in their hands, there to lie long) inforces them to give security or interest for it.

This Court will inforce the recovery of a Legacie, or force the performance of a VWill.

It serves for the recovery of ones land, debt or duty, although he have lost the Conveyances, or Writings; by which he should make his Title to it, or otherwise be without remedy for it.

It inforces him that hath sold land, and taken money for it, assured by defective Conveyance, to make the same perfect and good.

It will inforce a Tenant to attorn, to perfect an Assurance.

In these and such like cases, this Court of Chancery doth alwayes, or for the most part, give relief, as you may see more at large in *Totbills* and *Caries Reports*.

In some other speciall cases, likewise this Court doth exercise a power, as to prevent the disinheritance of an heir, or restore it.

To avoid the extinguishment or suspension of rent or common.

To prevent an occupancy.

To avoid the bar of an Action, by the Statute of 21 *Jac.* of limitations.

It

It will order the inclosure of grounds or lands that are common, give relief against the turning of a water-courfe from a Mill, so as there be any speciall circumstance in the case, otherwise it is very shie and tender in making Orders in them.

But regularly this Court doth not give relief where the substance of the suit by Bill and Answer tends to the overthrow of an Act of Parliament, made for publike peace and repose, or to the overthrowing any fundamentall point of the common Law, or to overthrow and take from other Courts their peculiar jurisdiction, or the like.

In all such cases, wherein the Plaintiff hath h's remedy at common Law for the very same things, he shall not be relieved here.

Where a promise is made to assure land for a certain summe of money, in this case the party may either sue at Law for damages, or in Chancery for the land it self.

The like case for a Nufance, where the Law gives me damages, I may sue here to have the Nufance removed, or the thing it self restored; and yet there may be some speciall circumstances in the case, which may make the Court retain it; as where a suit is grounded upon a Will Nuncupative, Lease Paroll, or long Lease, to avoid Wardship, or to establish Perpetuities, or to defeat Purchasors, or for brokerage, or rewards to make marriages, or for bargains at play, or wagers, for bargains for Offices against the Statute of 2 *Edward* the sixth, or upon contracts for Usury or Simony; or if it be for land not worth fourty shillings a year, or for any thing else under the value of ten pounds, those are regularly disallowed here: and sometimes upon notice taken hereof by the Court, upon motion, or upon *Affidavit* onely, before the cause comes to hearing, it is dismissed, but
if

if it stay longer till it comes to hearing, it is then dismissed; yet there are some circumstances that may make some of these retainable; as where the suit for so small a matter be for the poor of a Parish, or the like.

In such like cases as these, the matter being heard upon Bill and Answer, and the proofs and witnesses, the Court may (withont any regard to form or mispleading, so as the truth, *viis & modis*, may be discovered) proceed to sentence it according to equity and good conscience.

All persons able in Law to sue or be sued, may in this Court sue or be sued.

Reliefe may be, and is often given against or for an infant in this Court, touching which matter, these things are to be known;

As to suits against an Infant.

First, an Infant hath been compelled to answer a bill in this Court, as in *Hares case*, *Hil. 3 Jac.* and *Mores case*, *11 Car. Tothill 108, 109.* And being but twelve yeares old, was bound by a Decree of this Court, *37 Eliz. Wadhams case*, and upon a review, decreed again, *Cromwells case, Mich. 7 Car.* and was committed to the Fleet for disobeying a Decree, *12 Eliz. Tothill. 108, 139.*

Secondly, this Court may also, if it pleaseth, appoint an Infant Defendant, a Guardian to defend his suit, *Caries Reports 38.*

Thirdly, a copi-hold was surrendred to the use of an Infant; for the Infant to pay an annuity to another at his full age, which he refused; it was decreed he should pay it, and the arrears thereof, *Sawyers case, 9 Eliz. Tothill 107.*

Fourthly, *Young* purchased lands in the name of *Mason,*

Mason, in trust for himself and his heirs, and dies, not declaring any determination of his trust, procures *Mason* to convey it to him, being of kin, he conveys it to *Infants*, *C.* sues here as next heir, the Court agrees, that if the benefit of the trust did belong to *C.* that it shall be decreed to him, during the minority, and then that the *Infant* shall convey it. See *Caries Reports* 30.

Fifthly, a mother conveyed her Lease to her son in trust, and after, the son conveyed it to his children, *Infants*, and it was decreed against the father and children; because done without any consideration, *Tothil* 98.

Sixthly, between the date and sealing of the Conveyance of land sold, the Lord *Morley* passed it to an *Infant*, and it was decreed against the *Infant* and him both, 36 *Elix.* Lady *Russels* case.

Seventhly, the father being Tenant in Tail, sells his intailed land, and leaves as much free land to descend to an *Infant*, the Court ordered, when he comes to age to pay the money given for the land, according to his fathers Will, or else that the Purchaser shall have the free land, *Tothil* 184.

Eightly, an *Infant* may by this Court, be compelled to give a discharge of money due to, and received by him, as in *Rayners* case, 13 *Car.*

Ninthly, where one made an *Infant* Executor to prevent the payment of his debts, he was ordered by the Court to pay them notwithstanding, *Mich.* 9 *Iac.* *Tothil* 108.

Tenthly, an *Infant* may in some speciall cases by this Court be concluded by his agreement.

But regularly, if an *Infant* be twenty years of age, and make a Contract, never so much to his advantage, the Court will not conclude him, nor will the Court decree against him by his consent, or the consent

sent of his parents but in some specill cases upon the merit of the cause, *Mich. 8 Car. in Chancery.*

A father being about to convey some of his land to his younger son, and the eldest son promised to give the younger son an hundred pounds if the father would forbear it; in this case the eldest son being an Infant, was ordered to stand to it. See *Stiles* his case, *2 Car. Tothill 95.*

Eleventhly, a Surrender was made of a Copihold by an Infant, to the use of *I. S.* for money paid, and no help could be had here, *Hughs case, Tothill 180.*

Twelfthly, if I take bonds for my money in my childrens name that are Infants, I may relase the debt, and this Court will allow it, and forbid any suit upon them.

As to Suits by or for an Infant.

FIRST, he shall have the same relief upon a Breach of trust, fraud, or the like, in this Court, as another man may have, notwithstanding his minority, *Tothill 108.*

Secondly he may sue by himself, or his Prochein-amy or Guardian, as the Court will order,

Relief is often given by this Court, against, or for a woman under covert Baron, touching which, these things following are to be known.

As to Suits against her.

FIRST, she shall be compelled to answer with, or without her husband, See *Caries Reports, 100, 101. Tothill 95, and 96.* But more especially, if he be

be out of the land : and she shall be bound by the Decree of this Court, as in *Westdeans* case, *Totbill* 93. and she may be committed till she do obey it, as in *Strywards* case.

2. The husband and wife were ordered to levie a Fine, and perfect assurance, *Totbill* 93.

3. The husband was ordered to give security that the wife should release her Right to land. See *Totbill* 92.

4. An agreement in some cases will here be ordered, to conclude her where the merit of the cause requireth it : As if a man have two Tenements of his wifes land, and they agree with the Tenant, that if he will surrender the one, he shall have three lives in the other, and he doth so, and the husband dies, the wife was ordered to make it good. See *Irelands* case, 37 *Elix.* *Totbill* 91. But regularly it is otherwise ; and therefore where she hath land with other coheirs, and she with the consent of her husband, agree to take a thousand pounds, to release her Right, the Judges did certifie she was not to be concluded, *Trin.* 7 *Iac.* *Dockwrays* case, *Totbill* 98. yet in 10 *Iac.* *Randalls* case was, that a single woman did agree, and after her marriage subscribed her name, with her husband to a late agreement, and was concluded by this later, by the Courts Order, *Totbill* 96.

But in *Slaters* case, 37 *Elix.* *Totbill* 93. She and her husband did Article to forgo her Joynture, for other recompence, and a Decree was made thereupon (but without her consent) in her husbands life-time, and after his death, the Court will not binde her to this agreement.

5. A Lease of land was made to friends, to her use, to begin after her husbands death, and they two
levie

levie a Fine of the lands, this will not bar them in equity, *Trin. 15 Car. Listers case.*

A. made over his Lease for years, to the use of C. his wife, after he and his wife sold the land, and levied a fine of it to D. The Court ordered that the Purchaser should enjoy the land against the wife, after the husbands death, *2 Car.*

One was seised of land to the use of a Feme sole, who after took a husband, and her husband sold the land, the wife had the money, and she and her husband desired the Feoffee in trust, to convey it, and he doth so, yet it seems the Court of Chancery will not bar her of the land after her husbands death.

The Court ordered the husband and wife to levie a fine of morgaged lands, settled in her; the Lady *Griffins case, 4 Car.*

One did convey land to her husband in trust, and he took the profit, and left it with his wife, and she married again; they two were sued in this Court, and yet neither, as Executor nor Administrator to her first husband, as in *Acklands case, Tothil 106.*

As to the suits by and for her.

In some cases she may sue her husband, as for Alimony or maintenance, where they be parted, but ordinarily she may not sue her husband, nor her husband sue her, *Symphons case, Tothill 94, 97.*

Secondly, she hath been allowed to sue without her husband, and without his privity, especially he being beyond the Sea, *Tothill 95.*

The woman and her husband agreeing to part upon difference, and he giving her a summe of money for her livelihood, which was put into a friends hands for her, she was allowed to sue alone for this without her husband. *Caries Reports 87.*

Thirdly, she was admitted to sue here for her duty released by her husband, gone beyond Sea, as in

Farewells

Farewells case, 32 Eliz. and Barkers case, 5 Car. Tothil 95. As for her Jewels, the Earle of Derbtes case, Tothil 96. And yet she having goods, she pretended to her Paraphronalia, the husband devised them, and it was here allowed to be good, and she remedieffe, as in Davenport's case, 5 Car.

Fourthly, if a woman had goods at the marriage, and the husband doth use and dispose them all his life-time, and then giveth them away, or maketh an Executor; this Court, it seems, will give her no relief, albeit the husband leave never so good an Estate besides, unlesse they be goods set apart, and preserved for her livelyhood, by some agreement, or the like, Tothill 55.

Fifthly, A woman divorced from her husband, *causa frigiditatis*, sued in this Court for her portion, her father being alive, and recovered it, Burrows case, Tothill 81.

Sixthly, the wife being parted from her husband, and having an Estate to her self, was allowed by the Court to devise it by her will, Mich. 15 Caroli Tothill 97, Georges case.

Seventhly, if a Feme sole being possessed of a Term granteth it over, or a Term be granted by another to her own use, and then she taketh a husband and dieth, in this case the Court ruled it to go to the Executor or Administrator of the wife, and not to the surviving husband.

A. Being possessed of a Term, granted it upon a Marriage to be had between him and R. S. to I. S. her brother to her use, and after marriage A. dieth, and she marrieth again, and then she died, I. S. the brother took out Administration of her goods, and got the Lease, and the second husband sued him in this Court for the Lease, but the Court would not relieve him, Pasch. 32 Eliz. Withernams case in Chancery, Co. k upon Listleton 350.

Eighthly,

Eighthly, *A.* being possessed of a Lease for years, granted it to *B.* and *C.* to the use of *A.* and his wife, and afterwards *A.* granted away all his Interest to a stranger, and the Court would not order it against the wife, *Dyer*, 369. *Crombions jurisdictions* 65.

A. conveyed her Lease for years to Lessees in trust, for the use of her daughters and children: lineally, *A.* had a daughter by one husband, who had issue, and it died, and the husband also, then she marries again, then the Lessees in trust, convey the Lease to the mother and her second husband, and discharge the trust, she gives it to her husband, and the heir sued for it..

It was ordered that the husband, and not the heir, should have it, *Baskerviles case*, *Tothil* 95.

A widow being about to marry, to prevent her husbands disposall of the land, conveys it to friends in trust, who with the husband do sell it for a valuable consideration, and she sued in Chancery, and the Court decreed, that the Purchaser should reconvey it to her, but should first deduct all his disbursements: *Fitz-James case*, *Tothil* 43.

A single woman, widow, or maid, may sue and be sued here, as another body; of which take some few cases.

1. A widow of a Tenant in *Capite*, sued here for her Dower, and had a commission to set it out; as in *Wilds case* 25 *Elix*.

No woman shall recover Dower of a trust by this Court, *Mich. 2 Caroli Kemps case*.

When the woman cannot tell who is Tenant to the land, she may sue, (albeit her Writ of Dower here at Law) to discover the Tenant, to know against whom to bring her Action, *Tothil*. 99.

A. conveys land to *B.* and his heirs, to the use of him and his heirs, in trust for *C.* and his heirs,
(*B.* having

(B. having then a wife) B. dies, and his wife sued for Dower of the land, C. sued against her for relief here, and it was denied; yet the wife of C. should not have had Dower in this case; for a woman shall have no Dower of a Trust, *Hernes case, Tothill 9.*

So A. delivers B. five hundred pounds, to put to use for him, and B. doth buy land with it, and makes A. believe it is for him, and in his name, but it was in his own name: A. it seems, satisfied herewith, B. dieth, and his wife sued to be indowed of the land, and the Court would give A. no relief against this Suit: *Trinity 6 Caroli.*

A Copy-holder cannot be sued for land without the Lord, *Caries Reports 57.*

An Heir also here, in some cases, shall sue and be sued, further then the Law bindeth him, as in the cases ensuing.

An Heir of an Estate in tail, having lands in fee, discended from the Ancestour, in liew thereof is bound by decree to pay the purchase-money, or let the Purchaser have the free land, *Pearces case, 8 Iacobi Tothill 184.*

The mother and son bought tailed land of her Ancestour, to the Plaintiff, some of the money due on a Bond which is lost, the Court thought fit to charge the mother and the son, because of the land in their possession.

The father sold his intailed lands, but had little for them; it seems, the heir may compel the purchaser to give the worth, *Tothill 182.*

The father Articled for land, the son no party, but consented to it, and it was decreed against him, *Pauls case, Trin. 4 Iacobi. Tothill 69.*

A Deed not inrolled was decreed against the heir of the land, *Tothill, 55.*

The father conceiving his land to be Free-hold

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Gave part of it to a younger son, and it fell out, that there was an old sleeping Deed of Intail, and yet it was ordered the younger son should have it : *Pountneys case, Tothill 54.*

Executors may charge, or be charged in Equity, further then the Law doth charge, wherein as to Suits or Acts by them, take these ensuing :

1. Here they may sue one the other, *Tothill 8.*

2. One of them may sue an Executor of an Executor, if he hath gotten the Estate in his hands ; *Briertons case, 6 Iacobi, Tothill 87.*

3. Two Executors be, the one doth disagree, the Act of the other shall binde in Equity, as it doth in Law.

As to Suits against Executors, take these things :

First, one Executor alone, without the rest, may be sued here, but he shall be charged for no more then he hath, *Harbages case, 35 Eliz. Tothill 86.*

Secondly, an Executor shall be bound by Decree against the Testator, *Hil. 5 Caroli.*

Thirdly, He must pay costs adjudged here against the Testator, if he have assets.

Fourthly, he shall not be charged here for a trespassse done by the Testator, *Hollands case, Tothill 84.*

Fifthly, nor may he be compelled here to give bond to perform the Will, without speciall cause be shewed, as that he is decayed in Estate, or hath broken the trust already in some particulars, or the like, *Browns case, 32 Eliz. Tothill 36.*

Sixthly, He may here be ordered to pay a debt by word, before a debt due by specialty, *Tothill 53.*

One joynt Tenant, or Tenant in common may here have relief against another.

The father may have relief against his own son in case of breaches of trust for a Lease. *Pasch. 1597. Dormers case.*

Of Trusts.

A Use of trust was, and still is, either of land or of goods, and both these are either expressed or implied.

A use of trust of land was a trust reposed in another, that he should suffer him that did trust, to take the profit of it, and he that was trusted, was to dispose the land according to the direction of him that trusted him: as when a Feoffment was made to *I. S.* and his heirs, to the use of *W. S.* and his heirs; here *I. S.* had the Estate and property of the land, but *W. S.* had, or was to have the profits in honesty and equity. So if one had agreed with *W. S.* for a piece of land for 20*l.* paid, and had no assurance, yet the equity of the land was in the Contractor.

The use of goods, is when one man hath them in trust for another.

The use of goods or land expressed, is when the use or trust is expressed between the parties upon the making of the Estate, implied, when it is not declared upon the agreement, but left to the construction of Law; as if I bargain and sell my land, levie a Fine, make a Feoffment, or suffer a Recovery of my land without money, and no use expressed, this in Law is to my own use.

But if it be for money, it shall be to the use of the bargainee, conusee, recoverer, or feoffee.

If it be without consideration that I conveyed my land by Feoffment to *I. S.* to have and to hold, to him and his heirs, to the use of his heirs, in this case *I. S.* and his heirs have the use in Law.

To every of those uses, there are two inseparable incidents; confidence in the person, and privity in the state expressed by the parties, or implied by the

Law : And when either of those failed, the use was either gone for ever, or suspended for a time at the least ; and therefore if the Feoffee to Use upon good consideration, had infeoffed another of the land, that had notice of the Use, the Use had been gone for ever ; because howsoever there was a privity of Estate yet there was no confidence in the person ; but if the feoffment had been without consideration, to such a one, in this case the Use had remained still, because the Law did imply a notice : So also, it seems, the Law was, when it was made, in consideration of marriage onely.

And if a Disseisor, Abettor, or Intruder, had come to the possession of the land, whereof the Use was, albeit he had notice of the Use ; yet the Use was suspended during their possession, and they should not have been seised to the Use, as the Feoffee was, for they come not to the land in the *Per*, but in the *Post*.

If a Lord by Eschear, Lord of a Villain, or one that had entred for *Mortmain*, or that had recovered in a *Custodiuit*, &c. had come to such land, and had notice of the Use, the Use had been gone for ever, for those come to the land in the *Post*, and above the Use.

And the Tenant in Dower, and by curtesie, should not be seised to Uses in being, for all these wanted privity of Estate.

And if there had been Tenant for life, the Remainder in Fee, in the Use of another, and the Tenant for life had made Feoffment in Fee to one that had notice of the Uses, this second Feoffee should not have stood seised to the first Uses.

So if the husband had made a Feoffment in Fee of the land of his wife, upon consideration, and without any Use expressed, the wife should not have had a *Subpœna*, because the Feoffe was not in privity of the Estate of the wife.

And

And if *Cestui que use*, for life, or in tail the Remainder in tail, with divers Remainders over in Use, had made a Feoffment to one that had notice, he should not have been seised to the first Uses.

But now at this day, by the Statute 27 Henry the eighth, Chapter 10. the Use of Trust, and the possession of lands, are for the most part united, and in all such cases where they are united, and the Use executed by the Statute, the Chancery doth not intemmeddle, but leave them to the Law. And such is this, where one seised of land in Fee, doth convey it to the Use of one and his heirs, or heirs of his body, or for life, or to the use of one of his Executors or Administrators for years.

But there are some Uses and Trusts still that are not executed by the Statute, and those remain as they were before, and are in the Consuance and order of the Chancery, as where lands are conveyed without consideration in Fee-simple after this manner, that the Feoffee and his heirs, shall take the profits, and deliver them to the Feoffor, and his heirs; or that the Feoffee shall account and give the profits to the Feoffor, or that the Feoffee shall convey the land to the Feoffor, or to his heirs, at his age of one and twenty years, or where it is conveyed to *I. S.* and his heirs, in confidence that *I. S.* shall alien it to whom the Feoffor, or to whom *W. S.* shall appoint, or the like? Or where the lands be conveyed to certain uses expressed, and there no other secret uses be agreed upon between the parties.

So where the land is conveyed to one without consideration to one and his heirs, without expressing any use or intent, this is to the use of the Feoffor, who may dispose of it as he pleaseth; but if it be to any intent certain, as to take back an Estate with remainders to others, &c. Here he cannot change it.

These, and such like uses and trusts, are not within, nor executed by the Statute, but they remain as they were before the statute, for all the State is in the party trusted, and the Grantor, or he to whose use the Grant is, hath nothing but a use, for which he hath his remedy onely in Chancery, where matters of this nature are determinable; for it is a rule, that as the questions of uses and trusts that are within the Statute, are to be decided and ruled by the Judges of the Common Law; so all other questions of uses and trust that are out of the Statutes, are to be ruled and decided by the Judges of the Chancery, *Cook* 1. 138. *Dyer* 369. 356 *Cromptons jurisdiction* 65. 58. 59. And the Judges in Chancery in ruling those cases, do proceed much after the rules they went by in the regulating of uses at the Common Law, before the Statute.

Before the making of the Statute, these amongst other, were the Laws of the uses.

1. The Feoffor was to take the profits of the land, and he might have disposed of it in his life time, or at his death to whomsoever he pleased; and his friends in trust were to settle it accordingly, or be inforced to it by *Subpœna* in this Court; and if he did not dispose it, the use was to go to his heirs, and if he had died without heirs, or disposition, it seems the Feoffees should have had the land.

Secondly, If the first Feoffee had conveyed it to a second Feoffee to the same use, or to a second Feoffee that had notice of the uses, in these cases the second Feoffee had it to the same uses; but if the Feoffee had sold it *Bona fide*, or conveyed the land to one that had no notice of the uses, in these cases the use had been gone, and he, to whose use it was, remediless for the land.

3. A bruit of a trust, or ones saying, there was a trust

trust to another, I being about to buy the land, because he would not have me to buy it, it seemes is not sufficient, but a Suit about it, and proof of it in Chancery, is sufficient notice to him that shall buy it.

4. If the *Cestuy que use* had appointed the land to be sold by his Feoffees, to pay his debts, the Creditors might have compelled the Feoffee to sell it, if he in his life time, or by Will at his death had appointed them to convey it to I. S. I. S. might have compelled them to it, and so their Heirs

5. The Feoffees (if any occasion had been) were to bring or defend any Action for the land, and to plead such Pleas as the Feoffors should appoint, to be enforced in the Chancery to it.

6. If the Foffer die, and the land descend to his heir, the party to whose use, &c. as it seems, had no remedy against him.

7. If the Feoffee or Donee to use, sell to one that knows of the use, the *Subpœna* shall go against them both, or otherwise against the party trusted onely, who must make a recompence for the breach of trust, if the land be gone.

These amongst other, were the rules by which uses at common Law were guided, and much accordingly are uses now executed by the Statute, and trusts of lands and goods ordered and guided at this day. as in the cases following, of Inheritance and Freeholds, of chattels, of goods.

Of Inheritance and Freehold.

IF I without any consideration Enfeoff one and his heir, of land, to the intent he shall take the profits thereof, and deliver to me and my heirs: Or

to the intent he shall account to me and my heirs for the profits thereof; or to the intent he shall re-convey it to me and my heirs or to my heir at one and twenty years old, or to the intent that he shall alienate it to L. M. and his heirs, or to whom I shall appoint; or I convey it to certain uses expressed, but there are other secret uses agreed upon between us; in all such like cases which are out of the Statute of Uses, this Court of Chancery, if any complaint be, will order the parties trusted to perform the trust.

If I, without any consideration, bargain and sell my land by Indenture, to one and his heirs, to the use of another and his heirs, (which is a use upon a use) it seems the Court will order this: But if it were in consideration of money by him paid, here, it seems, the expresse use is void, both in Law and Equity.

And if a woman in consideration of four hundred pounds paid her by her son, bargain and sell her land by Indenture, to him and his heirs, to the use of her self for life, and after, of the heirs of her son, in which case by Law the Free-simple is to the son, presently, and the use for life to the mother void; nor is there, as it seems, any relief for her in this Court in a way of Equity, because of the consideration paid, but if there were no consideration, on the contrary, *Tothill* 188.

A voluntary Conveyance was made to friends in trust, to the use of the mans own children, with a remainder over; the Feoffer being indebted much Money, the Court inabled him to sell part of it to pay his debts, *Grants* case, *Tothill* 42.

If one that hath land in trust, convey it to one that hath notice of it, and he convey it to one that had no notice of it, in this case he that had no notice

notice is seised to the first uses, *Pills case, Tothill 186.*

If one convey his lands to friends in trust, and after sell the Inheritance, the trust in Equity goes to the purchaser, *Decrees, Tothill 44.*

Copi-hold was surrendered to the use of *I. S.* to the intent that he should pay an Annuity to a third person, the which he refused, the Court ordered him to pay it, with all the Arrears; *Tothill 107.*

Of Chattels reall, and term of years.

IF I be seised of land in Fee, and convey it to *D. L.* and his heirs, to the use of *W. S.* his Executors and Administrators, for twenty years, or for any other number of years, in this case the use will be executed within the Statute: But in case where I be possessed of a term of yeares in being, and grant it to friends to any uses and purposes in trust, this is out of the Statute of uses, and orderable in the Chancery onely, where, if the trust be broken, I must have remedy.

One possessed of a term in years, conveys it to friends in trust, to the use of *D.* for life, and after of the heirs males of his body; in this case the Court resolved and ordered that *D.* so long as he hath an heir, may dispose it, and that an intail of, or out of a Chattel, is not good: but a Remainder in tail of a trust, may be ordered in Equity, the judges agreeing to it, *Tastons case, 2 Jac. Tothill 83.*

The generall trust of an Executor, is to pay debts and legacies, and for the surplusage, to account to the Ordinary, *Ad pios usus.*

Henry, Earle of Darby, conveyed certain Leased lands in trust to *Doughty* his servant, for payment of his

his debts, and upon a mediation of an end of controversies between the daughter of *Ferdinand*, eldest son of *Henry*, Earle, and *William* his youngest son, now Earle; It was ordered and agreed, that *William* the now Earle, should pay all his fathers debts; whereupon *Doughty* conveyed all those Leases to *William*, and after the Creditors sued him in Chancery, but had no relief, and were ordered to pursue their remedy against Earle *William*, *Hil. 1 Jacobi. Caries Reports* 25.

The Plaintiffs wife conveyed away her Estate to the Defendant her son before marriage, and after the Defendant conveyed it to his children: in this case the Court conceiving it to be done without any consideration, did decree it for the Plaintiff against the Defendant and his children, *Poveys case, Totbil* 98.

Of Chattels personall, or Goods.

IF I deliver Money or Goods, or cause a Statute bond or other Especialty to be made to another to my use, or to any purposes or intents in trust, and he perform not the trust, I may compell him to it, or to give me recompence for the breach of the trust here, and therefore, if he dispose the Money or Goods to his own, or any other use then I appointed it, or will not dispose it according to my mine, or release, or discharge the duty, my remedy is by *Subpœna* in this Court, and if in these cases the Goods or Money be taken from him, or he have any injury in them, he must sue for remedy, and I may compell him to it here, *7 Ed. 4. 14. 29. Cromptons jurisdiction, 43. 62. 65. Brook Feoffment, 60.*

If a Statute be made to *A.* and *B.* to the use of

of *A.* alone; and the Conusor get a release of it from *B.* alone, in this case *A.* shall have remedy here against them both, (as some say against *B.* onely; and not against the Conusor.) See *Carries Reports*, 14, and 15.

Of Bargains and Agreements, or Promises.

ARTICLES of Agreement were briefly drawn between two, and their hands to it, for the sale and assurance of lands for Money; the seller refused, and upon complaint here, was ordered to make the assurance according to the Agreement; the manner of the assurance referred to a Master of the Chancery, *Chivers case, Hil. 4 Caroli.*

A suit was brought here upon a Paroll Agreement, to execute an assurance of land upon a marriage agreement, (the case thus:)

A Suitor to *B.* the brother of *A.* comes to *B.* and tells her, that if she will marry his brother, he will assure her of twenty pounds a year land for her joyn-ture, and she did marry him, and after he refused: It was decreed in this Court, and the Court of Requests both, that he shall be compelled to it; and where it is said, that heretofore the Chancery did not use to decree Paroll agreements for assurance of land, it is now otherwise; for where there is any execution of it by payment of all or any considerable part of the money for the land, there the Court doth decree it.

In the Exchequer one sued by English bill upon a Paroll agreement to have land assured, and shewed that he had provided two thousand pounds, the purchase

chase money to his great losse, &c. And the other refused to assure the land: in this case the Court would not decree the assurance of the land, but decreed he should pay the Plaintiff damages for his losse. So in 13 *Caroli*, *Olivers* case.

The agreement was to convey the land, as Counsell should advise, the Paper-book drawn, and agreed on to be ingrossed, and then the seller refused to proceed; in this case the Court would not decree it to be done, because no Articles nor money paid, but a bare paroll agreement, and yet some speciall circumstance may make this binding; and therefore a verball agreement between a Lord and Tenant, because the Tenant was an ancient Tenant, and hath been at charge of building, was decreed, *Kings* case, and *Huns* case, *Tothill* 65, 56.

A. Covenants with *B.* upon the marriage of his daughter, to leavie a Fine of the land to *D.* And the daughter being dead, and some money unpaid, *A.* sold away the land to others. In this case he was ordered for an hundred marks to make the Estate good, *Mich.* 8 *Caroli*, *Pages* case, *Tothill* 47. and 48.

A Bill was preferred here, supposing ten shillings paid, and two thousand pounds to be paid for land, to have the land assured, and upon Demurrer it was over-ruled, because it may be, to prepare for an Action of the case; but it seems, in this case the Court would not decree the assurance, *Trin.* 38 *Eliiz.* *Vviliams* case, *Tothill* 72.

The customes of a Mannor were in question between Lord and Tenants, and Tenant and Tenant: And a generall agreement made by Deed indexed and inrolled here, and a Bill to establish it, and nothing could be found but the Deed, and yet the Court would not alter it, albeit it was objected, that the Lord was at the time of the agreement, Tenant in
Tail,

Tail, and some of the Tenants Infants and Feine Coverts; *Caries Reports* 22.

If one enter into a Statute to L. S. who doth afterwards by Indenture of agreement, promise and agree with the Conusee, that in case the Connusor did fail of payment, Execution should be done upon some certain land onely: In this case, if after it he shall sue Execution upon any other lands, the party grieved may have relief here, and compell him to perform his agreement, and have an Injunction also, if he desire it; *Pulvertosts case, Caries Reports* 37.

The Plaintiffs Bill was, that he leased a house to the Defendant, and did covenant to repair it, and then the Defendant did covenant to keep it so, and that the Defendant, as well to make the Plaintiff break his covenant as to free himself from his covenant, did interrupt and threaten the work-man, so that they durst not go on, and so the houses are decayed, and the Plaintiff without remedy. The Defendant demurred; pretending the Plaintiff had remedy by Law, but it was over-ruled and put to answer; *Caries Reports* 59.

A Bill was brought to be relieved against the Defendant, as brother and heir, for that the Plaintiff had paid to his deceased brother, 34 l. for a Lease, and he died before it was made, and therefore desired his Lease or his money, and was relieved, *Caries Reports* 77.

One Joynt-Tenant promised the other, lying on his death-beth, he would not take advantage of the survivorship, but suffer him to dispose of it by his will, by which he devised part of the payment of his debts, and the survivor was ordered to make the Estate accordingly; *Caries Reports*, 81.

The Plaintiff bought of the Defendant the reversion of a Copi-hold which he could not enjoy, as was
 confessed

essed by the Defendants answer, ordered by the Court to shew cause why he should not repay the money back again, which he had received on the Bargain: *Caries Reports* 93.

One brought his bill to be relieved here upon a promise made to him by the Defendant, to surrender a Lease upon the payment of an hundred marks; and because the matter was meet for the common Law: *Caries Reports*, 95. 97.

The Bailiffs of a Town promised a Lease, the Court upon this would not give any relief against any of their successors, but against the same persons, as common persons upon the promise: *Caries Reports*, 103.

What misprisions in Conveyances, or other Deeds are relieveable here.

WHere there is any mistake in a Deed, so that it is not made in pursuance of the intent and agreement of the party, this Court gives relief.

If the word Heirs being in Fee-simple, or the like, be omitted; or that part of the land bought and sold be left out of the Deed, and that it do appear that the Conveyance was made upon good consideration, the Court in this case will rectifie: See to this purpose *Caries Reports*, 16, and 17.

Dean and Chapter of *Bristol* made a Lease, mistaking the name of the Corporation, and the Court held, that for Leases made for some time of continuance, and upon good consideration, there should be relief given here, *Caries Reports*, 32.

The Lessee in the Lease was not named in the premises of the Lease, but in the *Habendum* onely, decreed to be good, and being referred to the two chief Justices

Justices and the chief Baron, was by them certified to be good in Law, *Butlers case*, 22 *Elix. Caries Reports* 88.

One brought his Bill here, to be relieved, for that he had conveyed by the Deed more land then was intended and agreed; in this case, because it appeared that the Defendant was a purchaser, upon a valuable consideration, the Court would not relieve the Plaintiff, *Cliffords case*, 4 *Iac.* in Chancery: and yet where more lands passed by a Fine then was intended, and the party relieved here by the Judges consent, *Caries Reports* 20.

Mistakes in making of a Bond in either of the parties names, may be holpen here, *Colstons case*, *Tothill* 7.

If a power be reserved to make Leases by a Covenant without transmutation of the Possession, no help can be here, because it is void in Law: and if it be upon a change of Possession, and the power be not precisely followed, that is, doubtfull, and rather more strong against help, for then the Estate works, and the power gone, and upon Wills no help. See *Caries Reports*.

If one be bound to me for Money, and the same day after the sealing of the Bond I give him a release for other things, which by mistake is made too generall, whereby this Bond is also released, in this case I may be relieved here, and shall receive the Money notwithstanding, *Tops case*, *Tothill* 27.

Haddam the husband, was ordered to procure his wife to levie a Fine, and to enter into a new Bond of five hundred pounds, because the old Bond was worth nothing, by the mistake of the Writer, 10 *Iac. Tothill* 140.

Where

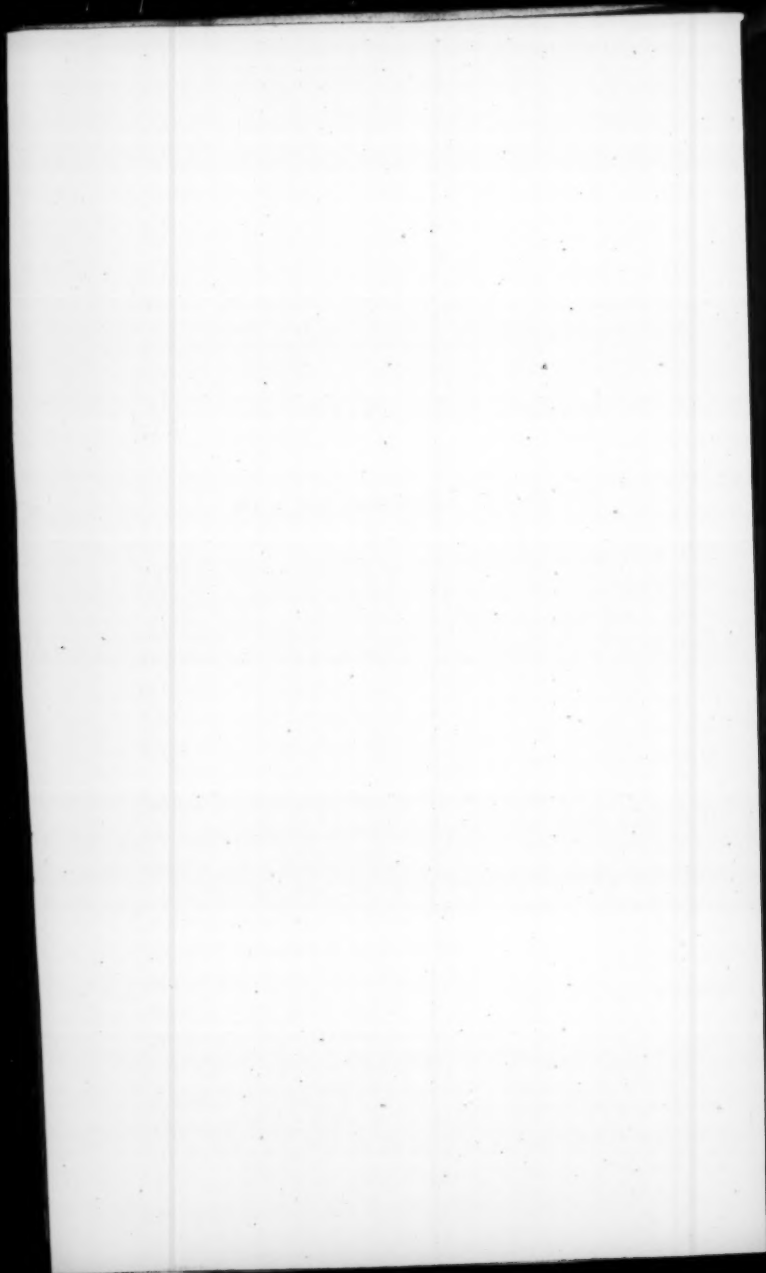
Where an assurance of Land is made defective, this Court will enforce the perfecting of it.

WHereas a Conveyance is made for lands or Tenements, and it is found defective, and the Estate not well executed to the Purchasor, according to the intent of the parties, for lack of words sufficient in the Deed, or for lack of livery of Seisin, attornment, inrolment, or the like: and there was a good consideration given for the land; in such like cases the Court in behalf of the Purchasor, will compell the party in whose power it is, to perfect the Estate: *Totbill* 44. 48. 182, 183. 138.

Where a man for money, or other valuable consideration sells land to one, and the word heir is left out in the *Habendum*, in this case, the party who sells shall be compelled to amend it: And so when lesse is granted then was intended, and so for any other mistakes, *Caries Reports* 16, 17.

A Mesuage was demised, (*cum pertinentiis* onely) and because sundry lands had been occupied formerly therewith for the same rent, and by Lease of the same words, the Lord Chancellour *Bromley* and the Judges, ordered, it shall all passe, though, perhaps, in Law they will not passe by these words, but it seems in such like cases it is very considerable in equity, what the value of the land is, and what money is given; for if the house with the appurtenances be sufficient for the money, unlesse the intent of the partie were to grant the whole; it seems agreeable to equity that there should be no further extent made of the words then what the Law makes.

The Ancestour takes money for a Lease, and dies
be-



before it is made, the heir must make it good, or repay the Money, *Caries Reports* 7.

Where a man for Money, or other valuable consideration, sells land by Deed, but Livery of Seisin is omitted, I may compell him afterwards to do it, by this Court: So likewise, if upon the same consideration he sell me land in two Counties, and give me Livery of Seisin of the land onely in one County, this Court will order him to make Livery of the land in the other County, or pay back part of the money, *Caries Reports* 17.

Where a Conveyance is imperfect through the want of the Tenants Attornment; the Tenant in this case shall be compelled by this Court to Attorn, and so it was decreed in *Hillary Term*, 3 *Car.*

A. was Lessee for one and twenty years, and Leased to *B.* for ten years, rendring Rent; *A.* without the privity of *B.* did grant the Reversion to *C.* and *B.* refused to Attorn, and *C.* thereupon sued *B.* in Chancery, to compell him to Attorn; And in this case it was decreed by the Master of the Rolls with the assent of the Masters of the Chancery, that he should Attorn, and pay the arrēarages; But Justice *Whitlock* then Assistant, was utterly against it, and of his opinion were the two chief Justices, chief Baron, and Justice *Dodrige*; but they all agreed, the parties themselves to the assurance, may be compelled to make Livery; and it hath been often denied here to compell him to Attorn who is at liberty by Law, especially where the party quarrelleth at the Tenants Estate, or entreth into part of the land, or hath covenanted for recompence, in case of not Attornment, *Caries Reports*, 4.

Where the Conveyance is made without good consideration, this Court of Chancery will give no relief.

FOr instance, where there is a Rent granted, and no Deed to warrant it, and nothing is given for it, or a Reversion is granted, and nothing is given for it; this Court will not enforce the Grantor to perfect it.

Where an Estate was made by Covenant, and not good by Law, it was ordered by this Court to be made good, *Brinces case 40 Eliz. Tothill 85.*

A Deed which was not inrolled, was by this Court decreed against the heir of the land, but agreed it should not binde any other Estate challenged by survivorship, or otherwise, *Pauls case, 14 Caroli, Tothill 54.*

A Bill was here exhibited, to be relieved against the Defendant, who would have avoided an Estate for lack of Liverie of Seisin, and it appeared that the Plaintiff had enjoyed it quietly five and twenty years, in this case it was decreed he should continue the quiet possession without Liverie and Seisin, *Ridons case, 17 Jac. Tothill 54.*

Upon Promises concerning goods or debts.

WHere there is a Contract made for goods or chattells wherein the Contractor hath any wrong done him, if he gives (*Quid pro quo*) that so
it

it appears there is a good consideration in it : in this case the Contractor may be here relieved, but on the contrary, where there is no consideration, for there is *Nudum pectum*.

Where a man makes a promise without consideration, to build a man a house, or make him such or such goods, he shall not here be compelled to it, *Cromptons Jurisdiction*, 49.

A spontaneous and generall promise without any consideration was made by the son to pay his fathers debts, (no advancement coming to him by his father) he being sued here, the cause was dismissed, *Alexandes case*, 7 *Car.*

Where the Obligee agrees with the Obligor, to give him day for payment of the debt, and he sueth him or his surety before the day given, here this Court will relieve him.

What relief shall be had where there is extremity used, upon a Statute, Mortgage, Bond, or other ingagement.

Where a man by way of Mortgage conveys land to another for security for money lent, in this case, albeit the time of redemption be past, yet upon the paying of the principall money, interest and damages, he may have the land again by decree of this Court; yet where the Mortgage hath been of long continuance, as of twenty years or upwards, this Court will hardly give back the land, unlessse in some cases extraordinary: and if the Mortgager make a Feoffment of it to a stranger, and so extinguish the Condition, unlessse it appear to be to

the end to pay the debt, the Feoffee, perhaps, may not have this advantage, *Caries Reports*, 53. *Crowthers case*, 39 *Elix. Tohill* 79.

A Copiholder in Fee, surrendered to the use of one and his heirs, upon condition of redemption, after this computing his debts, and writing them down, he doth will part of his land shall be sold to pay his debts; after his death, one of the Creditors doth pay the money at the day of the Mortgage, yet the surrender was inrolled, and another Creditor sued him and the heir here, and had a Decree that the land should be sold to pay the debts, and if any remained, it should go to the heir, *Caries Reports* 7.

Where there was Lessee for years, rendring Rent, and two men striving for the Reversion, he exhibiting his Bill against him, upon payment of his money into the Court, according to his Lease, he had an Injunction to forbid them both any further to trouble him, *Caries Reports*, 46. and 47.

Where the Conusee of a Statute extends the lands in the hands of one of the Purchasers, and spare other Purchasers: In this case he may be compelled to extend upon the whole in all their hands, *Caries Reports* 111, 112.

Where a man grants a Rent charge out of all his lands, and after sells it by parcells to divers persons, and the Grantee force one onely to pay it, the party so paying it may here be relieved, and force the rest to contribute, and the Grantee to take no more of him then what is answerable to his proportion of land; but in such case he must be sure he make all that have bought any of the land, Defendants; that so he may make them chargeable with the Rent, and then they must shew cause why they should not contribute, *Caries Reports* 2. 13. 92.

When the Conusee in a Statute, or Plaintiff in a
Judge.

Judgement hath received satisfaction, the Plaintiff in Chancery, or Conusor, his Heirs, Executors or Administrators; or a Purchaser charged or chargeable by it, may force him, if he be living, or his Executors, or his Administrators, if he be dead, to acknowledge satisfaction upon the Judgement, or to deliver up the Statute: and if Statutes be very ancient, and nothing done upon them, this Court will inforce the owners of them to deliver them up without satisfaction. In like case this Court will force the delivery up of old Bonds, *Tothill* 178, 179. *Caries Reports* 145, 146.

Where the Plaintiff had Judgement and Execution against the Defendant for three hundred pounds, he was by this Court here ordered to take it out for one hundred pounds onely, *Caries Reports* 51.

Where a man upon an Obligation, &c. either at or after the day, according to Law, hath paid any money, and hath no acquittance for it, or have otherwise, at or after the day satisfied it, and hath no Acquittance for it, and it appears the Obligee hath accepted it, and is satisfied, and yet keeps the Bond, and refuseth to give the party a discharge; in these cases, he or his Executors, &c. after his death, may inforce him, his Executors, &c. after his death, in this Court to discharge it, and to deliver up the Ingagement, *Caries Reports* 74. *Tothill* 26, 27.

Where a man doth his utmost endeavour to pay money at the day, and to that purpose, after he hath provided it, he is robbed, or let by some other chance, and afterwards makes tender of it in some short time. So where part of the money is paid, and yet the whole Ingagement lies, and the party that hath it doth refuse to deliver it up, or to receive the rest of his money, it being tendred shortly after the day, or acknowledge what is paid, &c. *Caries Reports* 1.

So where the Bond is to do any thing other then the payment of money, and the thing is done, and the Condition performed, *Caries Reports*, 45, 46.

Where a man takes a double security for one and the same debt; as where he takes a Bond or a Bill, and goods in pawn, or any thing of the same nature, this Court will inforce him that hath taken this double security, to deliver up one of them, *Tothill*, 26, and 27.

Where I appoint a Scrivener to put out and receive my money, and by my direction he doth receive the money due upon a Bond at the day, and the Bond remain in my hands, and I refuse to deliver it up, this Court will inforce the delivery of it up, *Hunts case*, 22 *Iac.* *Tothill* 175.

Where a man enters into a Bond, or any other Engagement for money unlawfully gotten; as at Dice or Cards, or upon a cheating Contract, or the like, this Court will see him relieved against it, and have it took up, or cancelled, *Tothill* 23, 24.

Where a man gives an Engagement for that that is nothing worth, and which is neither gain to the Obligor, nor losse to the Obligee; as for debts, things in Action not recoverable, here this Court will give relief.

A. had a son he intended to present to the Church of *Dale*, and he being sickly, presented *C.* for the present, taking Bond of him for 600 l. to resign upon request; *C.* is instituted and inducted. After the son *A.* becomes healthy, and *C.* is required to resign, he refused, his Bond is sued, and he comes into this Court for relief, it was denied to him. and the Bond is agreed to be good in Law and Equity. *Trin.* 6 *Car.* *Wood and Berries case* in Chancery, *Tothill* 26, 27.

Where a man makes a Bond not to marry without the

the consent of friends, and the Bond becoming forfeit, is'sued ; it seems this Bond is not good, and this Court will give the Obligor relief, *Tothill* 26, 27.

Where money is paid upon the redemption of a Mortgage by Indenture, without taking any Acquittance, this Court will inforce the Mortgagee to bring in the Indenture to be cancelled here, *Caries Reports* 17.

The son and the father were bound to the Defendant in five hundred pounds, to stand to the award of the Lord chief justice, who ordered that the son who was Plaintiff, and had the Reversion in Fee, and the father who had the Estate for life, should make such assurance as the Defendant should reasonably devise. The Defendant in pursuance thereof, tendered an assurance to the father to be sealed, who being old and blinde, desired time to advise with his friends, the Plaintiff the son sealed, and the father did afterwards offer to seal, and then the Defendant said, he did not care for his seal, but he put the Bond in suit upon the fathers refusall formerly, and it was staid by Order of this Court, *Caries Reports*, 105.

In any of the afore recited cases, if the party to whom such ingagement is made, make use of it in any other Court by way of suit against him that entered into it, he may in this Court by Injunction stay the suit, and shall have the matter ordered here as in equity is fit to be done, *Tothill* 23, 24. *Sucklins case*, 11 *Car.*

This Court gives relief against the injuries of other Courts of Justice by their over-nice and strict observation of the Rules of the Law.

Where there is an extremity used against a man upon a Judgement had against him in any Court at Law, for money or land, this Court, although it will

not make void the Judgement, yet will it order the persons as it shall see cause in equity, and this was resolved upon a speciall debate by the Kings commandin 14 *Iac.*

In all cases, tending to overthrow of Judgements had in other Courts, this Court neither may nor will not examine or revoke them; for if so, it would render businesse endlesse. See *Caries Reports* 74, 75.

The heir coming into his fathers house, had of his fathers goods worth five shillings, and the Defendant sued a Bond of five hundred pounds against the Heir as Executor of his own wrong, and proving he sold or gave away the goods, a Verdict passed for the whole five hundred pounds, which appearing by the Certificate of the Justices of Assise, an Injunction was granted to stay all proceeding in this Action, and to forbid any new Action, till the Court have determined the matter, *Caries Reports* 49.

A debt upon a single Bill satisfied, and the Bill not delivered, was sued, and Execution gotten, and the party was by this Court relieved, 22 *Elix. Owens case, Caries Reports*, 74.

If one man do unduly get a Judgment in any Court in the name of another, relief may be had here, *Caries Reports* 76.

A drunken man being sued by another for words spoken in his drink, tending to Defamation,, sought for relief here, but could have none, *Qui peccat ebrius, luat sobrius, Caris Reports* 93.

One exhibited his Bill for relief upon an Obligation of three hundred pounds, which he entred into, conditioned for the making a Joynture to his wife upon consideration of one hundred seventy four pounds, promised to him by the Defendant in Marriage,

riage, which was never paid to him; he is sued at common Law upon the Bond: In this case an Injunction was ordered to stay proceedings, *Caries Reports* 112.

In what cases the Tenants Copiholder shall be relieved, against the hard dealing of the Lord of the Mannour.

First, If the Lord will out his Tenant that pays his Rent, or does his services, or if the Tennant surrender in Court, to the use of another, and the Lord refuse to admit him, to whose use the surrender was made, or will not keep Court for the benefit of his Copiholder, or exact uncertain Fees, they being certain; this Court in these cases will give relief.

Secondly, If he will not admit the Tenant Copiholder upon a Descent.

Thirdly, If the Tenant Copiholder be outed of his Copihold, and the Lord will not hold a Court whereat he may sue for his Right.

Fourthly, If a false Judgement be had against a Tenant Copiholder, and he petition to the Lord to redresse it, and he refuse.

Fifthly, If the Tenant Copiholder petition the Lord to grant him a License to let, and refuse it.

Sixthly, A woman Copiholder for life, the Reversion is granted to two for their lives, *cum post mortem, vel fortis facturam*, of a woman, it shall happen, and she take a husband that doth surrender to the first in Reversion, who is admitted and dieth, and after the next desireth admittance, and could not have it, but the Lord entreth as an Occupant, (as he might

might) and the husband and wife were willing to surrender to him in the Reversion for life, and the Lord refusing to keep a Court, or leave the possession, was ordered to do both in this Court, *Totbill* 3. 44, 45. *Caries Reports* 3. *Kitchin* 82, 89.

A Copi-holder granted by the Lord, at a Court held out of the Mannour, made good against the Lord by Decree of this Court, *Marks case*, *Totbill* 45.

Where the Lord imposes an unreasonable Fine upon his Tenant upon a surrender, &c. The reasonableness of the Fine shall be here adjudged of, and this Court will give relief. A years value of the land hath been here allowed good, *Caries Reports*, 54.

This Court gives relief to the Surety against the principall Debtor or Creditor.

Where there is a Debtor with a Surety, and Creditor, and the principall Debtor, and Creditor, by compact, and agreement without the privity of him who is Surety, continues the Debt after the first day of payment, when the Surety doth suppose it to be paid: in this case this Court will compell the Creditor to take his relief from the principall Debtor, and discharge the Surety, his Heirs, Executors, &c, *Miles case*, 5 *Car. Hares case*, 10 *Iacobi*, *Saunders case*, 10 *Iac.* *Totbill* 181.

Where there is a Detainer of any lands, Deeds, or goods, this Court will give relief towards the discovery and recovery of them.

As where a man hath Title to lands, and intends to bring his Action, but cannot discover who is Tenant to the land: In this case he may sue the Occupier in this Court, and he will be enforced to shew what he, or any under whom he holds claims, to his knowledge, and then he may know whom to sue, and upon what grounds.

Where

Where the Defendant held beyond his term, this Court inforced him to shew what term his Lease was for, *Mich. 6 Car. Tothill 183.*

The Conusee of a Statute, did by the power of this Court, inforce a Lessee for years, to declare all the particulars of his Lease, that so he might discover whether it were extendable or not, *11 Car. Tothill 183. Creswells case, Tothill 9. Caries Reports, 16.*

Where Writings are detained from a man, if the Court do see cause, it will inforce the Defendant to bring the Writings into Court, by a *Duces tecum*, *Caries Reports 43, 52, 53, 67.*

This Court gives relief for the recovery of land, debt, or duty, where the Law gives none.

Where a man hath a just Title to land but hath lost his Conveyances, this Court will give relief for the recovery of his land, *Caries Reports, 24. Goffatts case.*

Where a man hath a good Title to Rent, but no means to gain it, as if the Rent be seek, and he never had Seisin of it, or any other Rent wherein he hath had no attornment of the Tenant, or supposing the Rent is by some accident (without any reconpence for it) discharged: so if it had been usually paid, but I can shew no Deed for it. In these and the like cases this Court will give relief for the recovery of it, *Tothill 72, 172, 173.*

Where a man hath a debt due to him upon specialty, and hath lost his Writing, or cannot come at it: in this case, if he have witnesse to prove it, he may be relieved here for the recovery of it, *Caries Reports 25.*

Where an *Elegit* was returned and filed, and the time thereof elapsed, and yet the Plaintiff unsatisfied of his debt, this Court will give him relief by reviving the *Elegit*, *Tothill 179.*

Where a man makes a Will with severall devises, this

this Court will direct how they shall be taken and performed in equity.

The meaning of a Will is to be performed here, *Cobs case, Tothill 141.*

Where there was a Devise void in Law, by reason of a mis-recitall of a Grant, and lack of an Attornment, this Court did here decree it to be good, *Bacons case, Tothill 79.*

This Court doth give relief against a fraudulent practice to avoid a Lease, *Caries Reports 18, and 22.*

So likewise to avoid a debt, *Caries Reports 18.*

This Court will give relief in avoiding Conveyances fraudulently made; as where there is a Suit depending between two for land, and the Defendant, hanging the suit, make secret Conveyances of the land, this Court will order him to discharge the land thereof, *Tothil. 108. Harbynes case, Tothill 9.*

Thus much shall suffice to have spoken concerning the generality of the causes the Court of Chancery takes Connsance of, in which, for your further satisfaction, I refer to the Reports of Mr. Tothil and Sir George Carew.

It remains We should now come to the practick part of it, which directeth for the most part, their whole manner of Proceedings, wherein, for method sake, will begin with their first Processe called Subpœna.

THis Subpœna is the leading Processe of this Court, as to the procedure by Bill and Answer, and this doth require the Defendants appearance in this Court

Court by a certain day, under a certain pain, to make Answer to the Complaint of the Plaintiff, which is indeed the Bill, which formerly was wont to be put in before the *Subpœna* was sued forth, but now otherwise used; this is called a *Subpœna* to answer, and distinguished by that name, in respect there are seven other *Subpœna's* in order to further proceedings: as a *Sub pœna* for costs, a *Sub pœna* to make a better Answer, a *Sub pœna* to rejoyn, a *Sub pœna* to hear Judgement, a *Sub pœna* for witnesses to testify, &c. a *Sub pœna Duces tecum*, &c. for Writings, Evidences, &c.

Touching the *Sub pœna* to Answer, you must be very carefull there be no mistake in the body of the Writ, for that may prejudice the Plaintiff, and the Defendant may take advantage, if he finde any; but if there be a mistake in the Labell onely of the Writ, no advantage is to be taken by it.

This Writ may be made returnable three wayes, either upon the common dayes of Return; as from the day of *Easter*, in fifteen dayes, &c. or upon a day certain, after any of the usuall Returns, or after any the great Feasts, from whence the Returns take their names.

This word (*Next*) must be added, where it is requisite; as where the great Feasts be either to come or past.

The Writ of *Sub pœna* is to be served before the Return thereof be past, which they usually do, either by the delivery of the Writ it self, under the Seal to the person of the Defendant, or by shewing the Writ under Seal to him, delivering him a Note or Label of the day of his appearance; and this is more usuall when there are more persons then one in the *Sub pœna*, whereby the body of the Writ may be reserved to be left with the last.

Or

Or else the Writ may be left at the Defendants dwelling house, with one of his family, or at his place of residence. See Collection of Orders, &c.

It is conceived it may be a good service to leave the Writ hanging upon the door of the house, or to put it into the house under the door, or within the window of the house where the party doth dwell, or usually reside at. But that is where it is presumed it afterwards comes to his hands, or that he might be in the house at the time, or had notice of it.

Where a *Sub pœna* is served on the self-same day whereon it is returnable it is a good service if it be before noon, and the rising of the Court in Chancery: and the Defendant so served, shall be bound to an Appearance with all speed.

Where a *Subpœna* is had against a husband and wife, and the husband alone is served, and hath notice that it is against him and his wife, this is a good service as to both, and for want of Appearance an Attachment may be had, either against the wife onely, or against both. To which purpose, see *Caries Reports* 89, 101, 103, 106, 109, 110.

The *Sub pœna* being served, the Bill must be put in in due time, or else if the Defendant appear, and no Bill filed, they will get costs. To prevent which, take notice what time is prefixed for exhibiting the Bill after the day of the return of the *Sub pœna*.

If the *Sub pœna* be returnable upon a generall Return day, as *Crasino Octabis, Tres. Mens. &c.* after such or such a Feast, then hath the Plaintiff time to put in his Bill untill the second day before noon next following, the fourth day following every of the said Returns, and you must account the Return-day, and the fourth day after it, for two of the said four days,

But

But where the *Subpæna* is returnable upon such or such a certain day of the moneth, then the Bill must be filed the second day after it before Dinner.

Where the Bill is not filed, and the *Subpæna* returnable on a day certain ; as on any day of the moneth, the Defendants appearance being entred, his Attorney may prefer costs the next day after : And if the Bill comes not in the next day after costs so preferred, before noon, or presently after Dinner, the Defendant is discharged with such costs as the Master of the Court taxes him.

Where the *Subpæna* is made returnable on a return-day, in such case, the next day after the fourth day, is costs-day ; and if the Bill come not in the next day at noon, or presently after Dinner, (the Defendant having preferred his costs the day before) is discharged upon attendance with his costs.

Where the costs are not voluntarily paid for want of a Bill, either by the Plaintiff himself, or his Clerk, to the Defendant or his Clerk, in such case the Defendant may have a *Subpæna* whereby to command the Complainant, presently upon sight thereof to pay the Defendant, or the bringer thereof the said costs : And this *Subpæna* must be served on the Plaintiff personally, and upon such service, if the Complainant do refuse to pay the said costs accordingly, in such case the Defendant may (upon *Affidavit* made, that the *Subpæna* for costs was served) have an Attachment directed to the Sheriff of the County where the Complainant lives, to attach the Complainant for the said costs.

And if the Sheriff of the County make return upon that Attachment, that the Complainant cannot be found, then an Attachment with Proclamation may be sued forth against him : And that Proclamation

mation being likewise returned by the Sheriffs as aforesaid, then a Commission of Rebellion may be sued forth against the complainant.

On the other side, if the Plaintiff do in due time file his Bill, and the Defendant appeareth not the next day after costs day, then the Complainant upon oath made, that the Defendant was served with a *Subpæna*, may have an Attachment, and further proccesse, in case the Sheriff return, The party is not to be sound, &c.

The *Affidavit* that must be made, of the service of the *Subpæna*, must be made according as the manner of the service was: for if the *Affidavit* made do not prove a good service as before, no Attachment can be had upon it, and therefore he must swear as followeth.

That he delivered the *Subpæna* to the Defendant, or that he shewed the *Subpæna* to the Defendant, under the Seal of the Court, and delivered to him a note of the day of his appearance, or a Labell of the *Subpæna*.

Or that he left the *Subpæna* at the Defendants dwelling-house or lodging where the Defendant most abideth.

Or he may make *Affidavit* that he heard the Defendant confesse that he was served with a *Subpæna*.

If the party that makes *Affidavit* can swear, that he saw another (naming him) to serve the Writ as before; this will be sufficient to maintain the Attachment.

There can be no Attachment regularly made out against the Defendant for not appearing, untill there be a certain and positive oath made of the time, place, and manner of serving the *Subpæna* inserting the return of the Writ.

And where any person served with a *Subpæna* doth injury,

injury, or wrong, either by word or deed to the party who acted in the service of it, or doth set at nought or contemn the writ it selfe, or the authority of the Court from whence it issues, upon Oath made thereof, and motion thereupon, such person will be committed to the Fleet, &c. *Caries Reports*, 19. 92. 110.

Where there is appearance made by the Defendant within the time limited, and by the Bill filed: In such case the Complainants Attorney may give unto the Defendants attorney on the said day after the costs day, a Rule, that the Defendant do make answer to the complainants Bill by the same day seven-night then next to come. This rule and day must be entered into the Register; and in case the defendant faile to make answer, by that prefixed day so entered, or if he do not otherwise satisfie the court by shewing sufficient cause and occasion of his delay then the complainants attorney may have an attachment against the defendant.

Now this writ of attachment cannot be duly had, but where the *Subpoena* fore going is duly obayned and served, for if the *Subpoena* be counterfeit, or if true, and not legally served, this writ of attachment in these cases is unduly obayned and the defendant arrested by it, upon disclosing the matter to the court will be discharged thereof.

An Attachment duly gotten for not appearing, may not be discharged, till the defendant have first paid twenty shillings costs, if the serving of the *Subpoena* were upon his person, otherwise it is ten shillings, and every succeeding proces double so much: And upon payment thereof he is to be discharged of course: See *Caries Reports*, 32. 72. 79. 94. 105. *Torbill*.

The husband appeared and the wife not, an Attachment

ment was granted against them both: *Abells Case* 19. *Eliz. Caries Reports*, 65.

So he alone appeared, and put in a Demurrer, in both their names, without excusing her, Attachment was granted against both; *Spicer's Case*, *Caries Reports*, 39.

The *Defendant* made Oath, he could not answer without sight of Evidences, and had time given him and then afterwards put in a Demurrer: this Writ went out against him, *Pasch. 21. Eliz. Farmers case*.

VWhere the *Defendant* is served with a *Subpoena*, and afterwards for not appearing, an Attachment issues against him; if he do not appear upon the Attachment, and the Sheriff do thereupon returne (as in the like cases he doth) a *Non est inventus*, then there will issue forth against him a Proclamation of Rebellion, wherein observe, that this proccesse of contempt, and all Attachments in Proccesse are to be discharged upon the *Defendants* payment, to tender to, and refusall of it, by the Plaintiffs Clerk of the ordinary cases of Court, and filing of his Plea, answer, or Demurrer, as the case is, without any motion in Court: And if the *Plaintiff* do prosecute the contempt afterwards, the *Defendant* will be discharged with costs.

VWhere an Attachment is had, if the Sheriff do not make his Returne, a day will be given, and if he do not by that time, the Court will set an Amercement upon him, See *Caries Reports*, 44. 77, 78. *Collection of Orders*, Totbill 15.

VWhere any part is attached, and afterwards proclaimed, and he comes not in, but stands further out in contempt, in such case a commission of Rebellion may be issued forth against him for the apprehending of him and bringing him to the Fleet (the proper Prison of this Court.)

This commission of Rebellion is sometimes directed to the Sheriff, and sometimes to private persons, as in the case of *Cage and Elvington*, *Trinity 30. Jacobi*, *Tothill 37.*

This course is likewise taken against those that make not obedience to Orders or Decrees, to pay costs or the like.

VWhere those private persons who are made Commissioners, having taken the person in contempt, suffer him to escape, they themselves will be committed till they bring him in; as in the case of *Sachavorell* against *Sacheverell*, *Hillary Term, 18 Jacobi* *Tothill 38.*

If any person rescue one taken upon a commission of Rebellion, the Rescuer is to be committed.

VWhere the Commissioners upon commission of Rebellion, let the party in contempt goe where he listed, whereby he made an escape, they were ordered to be committed to the Fleet till they pay the Debt: See *Nelsons* case against *Telverton*, in *Trin. 18. Jacobi*, *Tothill 39.*

VWhere the party appears not, but stands further out in contempt, a Serjeant at Armes may be sent out to take him, and if he cannot take him, or that he resist, or having taken him, he make an escape, and so persist high in his contempt, in such cases a Sequestration may be had of his Land: And if the Suit be for Land, a Sequestration and Injunction for the profits of the Land, to be delivered to the Plaintiff by the Sheriff, or by other Commissioners for that purpose: as in the case of *Boles* against *Walley* and his Wife, *Caries Reports, 38, 58, 105, 106.*

We proceed now to Bill and Answer.

THE Plaintiffs Bill is in effect the same that the Declaration after appearance had, is either in the Upper-Bench or Common Pleas, and laies down the cause of his complaint in Chancery, being such usually as is exempt from remedy at Common Law, for that they insert commonly those words in the bill that the Plaintiff hath not remedy at Law.

This Bill by the practice of the present times may be put in after the *Subpoena* is both taken out and served, provided it comes in within the time before limited, to prevent costs.

Upon one and the same *Subpoena* served, two bills may be put in, provided the matter containd in them appeare not to be one and the same caule, for if it doe so, one of them may be dismissed with costs and where two bills are so put in containing severall matters, the defendant must answer them both.

This Bill in Chancery, and all subsequent pleadings and proceedings upon it, must be succinct and short, and not stuff with repetitions of deeds, writings or Records, (*in hæc verba*) but the effects and substance of so much of them only as is pertinent and materiall to be set down, and that in brief termes, without long and needlesse traverses of such things not traversable, tautologies, or impertinences.

It must not likewise containe any matter criminall or scandalous against the Defendant, or any other and if it do, and concerne the defendant, he may refuse to answer it; and the Plaintiff and his counsell whose hand is to the Bill, may be punished for it, and the party grieved may recover costs against such Counsell.

This bill must be put in under counsels hand, who

is carefully to peruse it, if at least it be not drawn by himself, and so that it be such as is before directed, and likewise the counsell must take care that it be such for the matter of it as the Court will allow, and take Recognizance of, and then he is to signe it.

Where any Bil containes matter not proper for this Court to give reliefe in, the Bill will be dismissed and so likewise will it be, if there wants counsels hand to the Bill, or if the counsels hand be counterfeited or disallowed, See *Caries Reports* 89.

To this Bill in Chancery filed, the defendant is to make answer, wherein many times he makes much delay, but in all cases of delay, he must upon Oath satisfie the Court of the causes of such his delay, which may be in severall respects; as.

First, where the matter containd in the Bill is such, as to which he cannot give answer, without conference had without some other persons named in the bill, or to whom the Bil refers.

Secondly, where the Bil chargeth the defendant with having of goods or Chattles of the complainants, to make discovery what they are; in such case the goods being in the Country, and he here, hee may make oath he cannot make perfect answer to the Plaintiffs Bill without sight and perusall of the goods: So likewise where he cannot make direct answer, without sight of some evidences or writings which he hath in the Country, he may make oath thereof; but in such cases, that place in the Country where those parties live, goods or writings or evidences lye, must be above twenty miles from *London*, for else he must answer within eight daies after his appearance, unlesse further time be given him by order.

Upon oath made as aforesaid, then his answer

will be spared till the first day of the next Term following.

There may likewise Oath be made by another person, either his Solicitor, Servant, or some Neighbour to the *Defendant*, that he is sick, or disabled for travell without danger of life.

Upon such Oaths made as aforesaid, if the *Plaintiff* refuse to allow of a *Dedimus Potestatem* on the behalf of the *Defendant*, for the taking his answer in the Country; This Court of Chancery upon motion or petition will order it, and the order that is so obtained must be carefully entred in the Registers Office, and the *Affidavit* upon which the Order is grounded must be filed in the *Affidavit* Office.

VWhere the *Defendant* doth not appear, or that after he hath made his appearance, he doth not answer within the time limited him, nor by way of excuse sheweth any the reasons aforesaid, in such case an Attachment as is aforesaid, is awarded against him, which Attachment must be entred into the House-Book of the six Clerks Office, and likewise in the Registers Book, expressing the cause of the issuing of the said Attachment.

VWhere there is no day by rule given to the *Defendant* to answer, in such case the *Defendant* is at liberty to answer at any time during the Term.

And where the *Defendant* makes default within that time to make answer, then an Attachment may be sued forth against him of course, and the same with the cause thereof (as before) must be entred with the Register (*viz*) That the *Defendant* appeared, and went away without any answer.

VWhere the *Subpoena* is made returnable so neer the end of the Terme, that there cannot be a day given to the *Defendant* to answer: in such case the *Defendant*

defendant must at his perill answer by the same day seven-
night next following the day of his appearance, al-
though it be out of Term, for the Court of Chancery
is alwayes said to be open.

But where the *Subpoena* is returnable on the last
returne day of the Term it selfe, then the *Defen-
dant* is at liberty to appeare the first return of the
Term following.

But where the *Subpoena* is returnable upon a day
cermaine, although the day be the last day of the
Term, the *Defendant* is bound to appear and yet an-
swer by that day seven-night next following the said
appearance.

In all cases where the *Defendant* either makes
Oath, that he cannot answer without Writings, Evi-
dences, &c. or conference with some other person,
or that he have a *Dedimus Potestatem*, and a Com-
mission to take his answer in the Country, the *De-
fendant* must at his perill procure his answer to be
put in before the day after the first costs day of the
next Term following, unlesse it be in Trinity Term;
then in such case it must be put in the second day af-
ter the second return, or otherwise the Complainants
Attorney may upon such his default make an Attach-
ment against the Defendant for not answering by the
day prefixed.

Where the *Defendant* lives in the Country, and
hath a *Dedimus Potestatem* granted him for the taking
of his answer to the *Plaintiffs* Bill, it hath been for-
merly the course, that in case the Counsell find
cause of Plea or Demurrer, that then the *Defendant*
should move or petition to have a speciall *Dedimus Po-
testatem* by order to answer, Plead, or Demur, for that
the Commissioners upon an ordinary *Dedimus*, had
not power to take any thing but an answer.

But by the late collection of orders it is ordered, that where the defendant is served with a *Subpoena ad respondendum*, and obayneth a Commission to answer in the Country, he shall without more words have the same liberty thereby to answer, plead and demur, as he had by the originall Procelle, if he could have appeared in person. See collect of orders, 29.

Where the defendant doth demur, or put in any iust Plea which he hath, to the disability of the person of the plaintiff or to the jurisdiction of the court under the hand of the learned counsell, it will be received and filed, although the defendant do not deliver the same in person, or by commission.

And if the defendant do not put in his demurrer, or Plea into the paper of Pleas and demurrers, in the registers office appoynted for that purpose, within eight dayes after the same is put into the Court, that so the said Demurrer may be argued before the Lords Commissioners, as it shall fall in course; and where this is omitted to be don the plea and demurrer is over-ruled of course, and the Plaintiff may take forth a *Subpoena* against the defendant, to inforce him to make a better answer, and in order for costs according to the last rules and collections of orders.

Where a man exhibits his Bill in Chancery, and dyes, the suite depending, who ever have the Interest in the thing complained for, whether heire, executor, or administrator, they may put in a Bill of Revivor against the defendant; or in case the defendant dye, the Plaintiff may exhibit his Bill of revivor against the heires, Executors, or Administrators of the defendant.

Where there is a Bill of complaint exhibited against a man and his wife, and the matter centayned in

in the Bil wholly concernes the wife, and they both make answer unto this Bil, and after they have made answer the Husband dyes, in this case a Bill of revivor must be brought by the complainant against the woman if he intend to proceed in that suite; and the reason is, for that the woman shal not be constrained to abide by that answer, which she together with her Husband, or solely as wife unto the man, had formerly made unto the complainant, for that shee was at that time under coverture.

And in case she survives her Husband, and continues possessed or seised of the things in controversy in *Statu quo*, shee may as shee shal think fit make a new answer, and shal not be bound up or concluded by that answer, which shee had during coverture, or solely as wife unto the man: and yet if she thinks fit, shee may stand to that former answer of hers, and proceed accordingly in that Suit.

Where the Plaintiff exhibits his bil in Chancery against a feme sole, and she appearing makes answer unto the Bil, and afterwards marrying, she comes under coverture, the Suite depending; In this case the Plaintiff may proceed against her and her husband, and shal not need any Bil of Revivor: and her husband shal be bound by that answer, which she made whilst a feme sole, for that she shal not advantage her selfe by her own Act.

Where on the other side the feme sole Plaintiff exhibits her Bil, and the defendant makes answer unto it, and afterwards she intermarryeth, here there can be no further proceedings by the Husband and Wife without a Bil of Revivor, because she hath abated her suite by her own act of marriage, of which the defendant may take his best advantage.

where

Where the man and the wife exhibit a Bill of complaint, and to this the defendant answereth, and the man dyeth, the woman shall be at her choise whether shee will exhibit a new Bill, or proceed upon the Bill by her husband and her selfe formerly exhibited.

Where there are two seized of joint estates, or where they are executors of one Will, or Obligees, or obligers; and they prefer a Bill in Chancery, to which the defendant makes answer, and after one of them dies, here the survivour may proceed in his suit against the defendant, and shall need no Bill of Revivor.

Note that the Bill of Revivor must pursue the first Bill exhibited, for where there is any variance betweene them the Defendant may be discharged, and the Bill will be dissolved.

Where there are administrators; *Durante minore* estate of an infant executor, in the nature of a Guardian, and they sue on the Infants behalfe, and the Suite depending, the Infant comes to age; here it seemes it needs no Bill of Revivor.

Where the complainant hath exhibited his Bill of Revivour, and hath procured thereupon a *Subjunct* to be served; he will be upon this in the same case as the Predecessor was, when the Bill first accrued, unlesse some good cause to the contrary (as that he is not the heire, Executor, nor hath the like interest, &c.) can by the Defendants answer be shewed.

Where a man doth wilfully refuse to answer, and stand out all the Proesse of contempt the court will take the matter of the Bill *Pro confesso* and decree it, *Totbill.* 69.

If the answer be good to common intent, the plaintiff must reply and prove the matter if he can and
not

nor insist upon insufficiency of the answer.

No exception can be taken to an answer after a Replication put in, for it is then admitted to be good but before Replication it may be excepted against.

But where it is excepted against, the causes must be shewen in writing, and delivered in to the *Plaintiff's* attorney or counsell the same terme the answer comes in, or within eight daies after; and if he amend it in eight daies, he is to pay no costs.

Where an answer is excepted against to be insufficient, it is usually referred to a Master, to consider of the exceptions, and he to certifye the Court whether it be insufficient.

If the Master certifye it to be insufficient, then the *Plaintiff* may take out proesse for costs, and the *Defendants* answer is not to be received, till he hath paid the costs.

The first answer being returned insufficient, the *Defendant* must pay forty shillings single costs.

If it be an answer that came in by commission, and be insufficient, he must pay fifty shillings.

The second answer insufficient pays three pounds.

The third five pounds costs, and you may have a *Subpoena* both for your costs, and to make a better answer.

But in these cases of exceptions, the insufficiencies appearing in the same exceptions. are the point to be insisted on, and no new exceptions may be moved. Where the Master upon reference to him finds the answer to be sufficient, & accordingly certifies, there the *Plaintiff* must pay forty shillings costs.

If the exceptions to answer be put in after the Term, there shall be time given to answer them untill the fourth day of the next Term, unless the court hasten it.

If the answer comes in by commission, and be not good, no new commission will be admitted but upon Oath of the inability of the person, and his payment of fifty shillings costs as before.

Where a cause goes to hearing upon bill and Answer, the same must be admitted to be true in all points, and no other evidence is to be admitted, but what is matter of Record, to which the answer doth refer, and which is proveable by record it selfe; *Caries reports.* 78. 30.

Concerning Demurrers, and Pleas, take these rules following.

First, a Demurrer is alwaies where there is matter defective containd in the bill, or where there is forrein matter,

The Plea of forreine matter may be of two sorts; Either where it is to the Jurisdiction of the court, or to the disability of the person, as where the Plaintiff is outlawed or excommunicated, or where there is in this or any other Court, a Bill or suite depending for this very cause

Or it may be that the cause hath been formerly dismissed this court, or the like.

Or if the matter of it appeare upon record, it may be put in without oath, otherwise not.

In case it be a Demurrer, it must expresse the cause of the demurrer, yet other causes may be insisted on at the time of the determination thereof by the Court.

If the demurrer be over-ruled, the Defendant shall pay five marks costs, where it is allowed, the Defendant shall have no costs.

If

If one plead a plea that is insufficient, and so overruled to be, as where it is an Uclawry pleaded, and it is not a good plea, he must pay five Markes costs.

An Uclawry is not to be pleaded unlessse you plead the Record, *sub pede sigilli*.

A plea of Uclawry, if it be in a Suite for the same thing for which a man sueth to be relieved in Chancery, is not to be allowed; but otherwise it is allowed and will be in force to hinder all the plaintiffs proceedings, till it be reversed.

But when it is reversed, the Plaintiff upon payment of twenty shillings costs, may upon a new *Subjæ* be served, put the defendant to answer the same Bill.

Where the Plaintiff conceives the Plea for matter or manner nought, he may put it to the judgement of the Court.

Where a man pleads for a former Suite, he need not set it down with the Register, but it shall be referred to a master to certifie (which must be done within a moneth upon the Plaintiffs procurement) and if the Master doth certifie against the Plaintiff, he must pay five shillings costs: If there be no report within a moneth of filing the plea, the Bill will be dismissed of course, with seven Nobles costs.

If the demurrer to any Bill be put in upon any slip or mistak in the bill, the Plaintiff of course laying downe to the attorney twenty shillings costs, may amend his bill within eight dayes after the Demurrer put in, but not after that time.

If the demurrer be admitted by the Plaintiff to be good within eight daies after the filing of it and he doth pay the defendant his attorney, or Clerk in the court forty shillings costs, then the defendant shall not need to attend his Demurrer, but the Bill shall stand

stand dismiss of course without motion, unlesse both sides agree to the a mendment of the same, but such dismissal is to be no Bar to a new Bill to be exhibited by the *Plaintiff*.

Where the *Plaintiff* finds sufficient cause for an order in the answer, he may goe to hearing thereupon without further proof, (of which he should be well advised) in which case he must procure his attorney to present the same in court, to be set downe to be heard upon bill and answer: But in case the Court shal not find grounds to make a decree or final order, the bill shall be dismissed with costs of the plaintiff admitted to reply, if he desire it, first paying downe five pounds costs, within foure daies after such hearing then the dismissal to stand, and the conclusion of the order upon hearing is to be penned by the Register accordingly, and then such dismissal shall be a good Plea in Bar of any new bill for the same matter.

Where a plaintiff proceeds so far as to proove, and upon the hearing it clearly appears the Plaintiff might have had full reliefe upon bill and answer, albeit he be relieved in the cause, yet he shall pay costs. See more fully of these things in the collection of Orders 16. 18. *Caries Reports*, 39. 87.

Replication Rejoinder and Sur-rejoinder comes next to be handled.

THE Replication is the speech of the Plaintiff, in way of reply to the defendants answer.

The re-joinder is the Defendants answer to the Plaintiffs Replication.

The Sur-rejoinder is a second defence to the plaintiffs action, opposite to the defendants Rejoinder.

First, the replication must be short relating to the substance of the bill, and it must avoid, superfluous and criminous matter.

Secondly, the replication must affirm and pursue the Bill, and confesse, and avoid traverse, or deny the answer.

Thirdly the rejoinder, that must pursue and confirm the answer, and must sufficiently confesse or avoid, or traverse every materiall part of the Replication.

Fourthly, no new matter must be put into the Replication, and so much matter only is necessary to be here, as will avoid the matter of the Answer.

Fifthly, if upon the answer there be somuch confessed, that the Plaintiff need not to draw into Pleading, and prove all the points, he must see to it, and reply and goe to proof only in those particulars in question, and necessary to be proved.

Sixtly, when the defendant doth demur, or disclaime to any Bill exhibited against him, the plaintiff can not reply. And if the defendant in those cases be served with a *Subpoena ad jungendum*, having before made no other answer, but a Demurrer or disclaimer, he shall have costs for unjust vexation.

Where the case is such, that the parties cannot come to issue, by reason of some new matter disclosed in the Defendants Rejoinder, that requires to be answered unto, the Plaintiff may sur-rejoine to the Rejoinder, and the defendant likewise to the sur-rejoinder, if there be cause.

As for the time for the Replication to be put in after the answer you are to observe that the Plaintiff hath

hath time for all this term, and all the next terme, & untill the beginning of the second term following to put in his Replication.

The next terme after the answer is put in, the defendant may give the Plaintiff rule to reply: and if such rule be given, and the plaintiff reply not, costs will be given against him.

And where he gives no rule, and the plaintiff doth not reply the second Terme, after the Terme the Answer is put in, the Bill will be dismissed with the costs of course.

But in case the plaintiff doth reply, and that the Replication be in Court, the Defendant can have no costs.

In case where the Complainant hath replied, the defendant may if he will rejoyne *Grass* to the Replication, and force the complainant to joine in Commission.

Where the Plaintiff intends to goe to Commission, he must serve the defendant with a *Subpoena ad re-
jungendum*; before he can have commission to examine witnesses, and upon return o' the *Subpoena ad re-
jungendum*, and oath made of the serving of it, the Plaintiff may by entering rules, force the defendant to rejoyne and joine in commission, or to go on to the examining of witnesses without him; for having given him seven daies to rejoyne, if within the time he refuse to do it, he cannot do it after.

In such case where the defendant is served with a *Subpoena ad re-
jungendum*, and does not upon the Plaintiffs Clerkes demand to the defendants Clerk, deliver Commissioners names by the end of the
term

Term, where in this *Sabpœna* is returnable, there the Plaintiff may without motion or Petition, give names, and take the commissions, *ex parte*. See *Carriers Reports*, 111. and collection of orders in Chancery.

The manner of Joyning in Commission, and executing of it.

IN the joyning of this Commission to examine witnesses, the complainant must first name one commissioner, unto whom the defendant may give generall exceptions;

The Defendant is to name the second,

The complainant the third, and

The Defendant the fourth.

The plaintiff is likewise to have, first the taking out, and carriage of the commission, as oft as any is sued out, and he or his Commissioners must give either in person, or by a note left in writing, at the place of the usuall abode of the other party, fourteen daies notice to him, of the time and place of executing the Commission, and if there be default then made by the Plaintiff or his Commissioners, in the Execution thereof, he must pay the Defendant such costs as he upon his oath shall make appeare he was put to in the intending of the Commission and the plaintiff must renew the commission at his own charge and the Defendant shall have the carriage of it, And so on the other side shall the Plaintiff have, if the defendant have the carriage of the Commission, and it be lost by default of his side.

But where it becomes void by any Error of the clerk in making it, the costs shall be borne by him, and that side for whom it was taken out.

Where the defendant hath the carriage of the Commission, he must give notice to the plaintiff, as is before directed; and if such notice be not given, either all the examinations will be quashed, or otherwise the court will grant to the other side a commission *ex parte*.

Where there hath been Publication there no Commission can be granted or renewed for examining witnesses without special order.

Where a Commission hath been to examine witnesses, without reference and Certificat upon it, it cannot be discharged upon a bare petition.

Where a Commission is taken out by consent, and the one side at the speeding of the Commission do put in no Interrogatories, nor examine any Witnesses (unlesse upon a Motion, and by order of the Court) he shall never after be admitted to have a new Commission.

Where the defendant had witnesses to examine, and they being served did not appeare, but make default here a new Commission will be granted to the Defendant, *Caries Reports* 91. 43. *Totbills* II 1. collection of the Chancery orders,

Toucbing the choice of Commissioners, and Examiners, and the exceptions against them.

First, they must be men indifferent.
The exceptions usually taken against them are, that he who is named Commissioner is of kindred

dred, or alied to the party of whome he is named, and so may very well be deemed to side with that party.

Or that he is Master to the party for whom he is named, or that he is Land-lord to the Party, or that he is of his counsell; or attorney for him, or one to whome he is indebted, or one that hath a suite with the adverse party.

The Commission being to be set upon at the time and place appointed, the Commissioners must call the witnesses before them, where if they appeare not, an Attachment issues against them, unlesse it be in such case where the witnesses are impotent, and then a Commission shall be awarded, to examine them where they be, but usually they will have costs before they answer.

When the witnesses appeare, to be examined, the Commissioners and Examiners must examine them themselves, and not leave so weighty a businesse to the trust of their Clerkes, or others to do it.

They are to hold the witnesses to the point insisted on.

They shall examine them but to one interrogatory at a time, and see that answered first, and at one time.

They are to take what comes from them in answer to what they are examined, and not upon their sight of all the Interrogatories, to let them set it downe themselves.

After they have beene examined, upon better thought they may force them to attend their examination. They ought not either to aske them idle questions besides the matters of the Interrogatories, nor set downe impertinent Answers.

They are to set down truly their sayings in Parchment and that done, they are to set their hands to

every Schedule-examination, and send them up into the Court as they are taken, with a certificate.

Where the commissioners meet with any obstruction in the worke, they must certifie that also.

After the Commission is duely executed, and that it be returned up, one of them must deliver it in Court, or they must send it by one that must make Oath, that he received it from one of their hands, and that it was not altered to his knowledg.

If any one of the Commissioners commit any misdemeanor about examination, the party grieved, upon Oath of it, may have the attachment against him, and cannot have a Commission to examine it upon the certificat of the other Commissioners.

Where there is a disagreement of the commissioners, or where there is any other speciall cause that obstructs the commission, they may have an examination set dowe on purpose to do it. See *Caries Reports* 30, 31, 40, 80, 81. *Torbill.* 189.

The interrogatories to examine witnesses must be successe and apt.

When witnesses are examined in Court upon a Schedule of Interrogatories, you cannot examine the same witnesses upon putting in new Interrogatories.

Witnesses may be examined aswell by examiners in Court (in case they live in or nere the Town) as by Commissioners in the Countrey.

Either party, as well Plaintiffe as Defendant after answer put in, untill publication be past, may examine what witnesses they please in Court, before one of the examiners; but before answer, and after publication no examination will be allowed, but by speciall order, some speciall cause being shewed.

Notice must be given both of the names and dwelling

dwelling place of the person examined, in all cases of Examination.

After the order of Publication, and that delivered to the examiner, no Witness may be examined in Court, though he were sworn before, *Caries Reports* 27, 58, 93. *Totbill*, 189, 190, 192.

Touching deposition of witnesses.

NO abstract, or copy of the deposition of the witnesses, is to be delivered till Publication be past.

No deposition of witnesses may be suppressed upon a bare Petition only, without reference and Certificate upon it,

Where there are severall cases which are meerely Crosse causes betweene the same parties, and touching the same matter there the Deposition of witnesses in the severall causes may be used at the hearing of both causes (being heard together) without any motion.

Where Depositions are regularly taken, they may not be suppressed by motion, But the depositions of witnesses appearing to this Court to be gotten by practice, may by order of the Court be suppressed. Deposition of witnesses taken in this Court, may by order of the Court be made use of in any other Court, *Caries Reports* 35, 56. Collection of Chantry orders.

He that will examine witnesses (*in perpetuam rei memoriam*) to preserve a testimony, he must first exhibit his Bill, and shew his title to the thing, and that the witnesses to prove it are old, and not like to live long, whereby he is in danger to lose it, and then

then pray a Commission to some Gentleman of Credit in the country to examine them, and a Subpoena to the parties interested, to shew cause if they can to the contrary.

If the party interested being duly served within fourteen dayes shew cause, the plaintiff must desist; if he cannot, he may goe on alone, if the other will not joyne with him, as he may if he will, and then fourteen dayes warning is to be given for execution.

The Court in this case will appoint Commissioners and give articles to examine upon, or they may be examined in the Court by an Examiner.

None but aged and impotent persons may be examined upon this Commission.

Where the defendant takes exceptions to the Proceeding in speeding the Commission, as whether it did appeare or not, and whether oath were made before them of notice given to him of the time and place of execution thereof, in such case the Commissioners must certifie up with the commission the exceptions the Defendant set on foot,

This Testimony taken upon this Commission, is not to be Published whilst the witnesses live; but in some cases, as either by consent of the parties, or upon oath made, that either the Plaintiff hath some tryall at Law, wherein he shall need it, and that the Witnesses are not able to come to the place, or otherwise by order of court, and then the commission is to be opened by a Master, and to be considered of, and afterwards it may, if the party will, be exemplified, and may by order of this court be given in evidence in any other court.

These depositions thus taken, shall not be made use of to be given in evidence against any other, but the Defend. who was warned to defend it, his heires or assignes, or some other clayming by or under him,

by

by some interest which accrued unto him, after the Bill preferred, *Totbill*, 189, 190. 191. 192.

Were both Plainriff and defendant have examined what witnesses they please, and are ready to goe to Hearing, then either of them must first give the other a rule for Publication; If it be the Plaintiff that gives the rule, then thus, (day is given to the defendant of Publication upon the Commission joyned) and if the defend give the rule, then on the contrary thus, (day is given to the Plaintiff for Publication upon the Commission joyned.)

The day so given is one week, which being expired, and no cause shewn to the contrary, then Publication is granted.

After Publication so granted, neither party can examine witnesses except it be by speciall order of the Court; which is not granted without an oath made that the party which requireth the same, nor any of them hath seen, or beene made privy to any examinations of any the witnesses formerly examined in this court by either of the parties, and some good cause be shewn either by oath or certificat of commissioners why the party could not get his said witnesses examined within the time limited for their Examination: in which case some times the court gives order to examine witnesses by a time prefixed, with this proviso, that the party shall not in the meane time see the said former examination.

Touching setting down the cause for bearing,

After Publication had, the Plaintiff, or in his neglect, the defendant may procure a day of hearing of course to be set downe by his Clerk at the end of the Term, when the Lords commissioners do set down daies for Hearing the next Term.

The dayes must be set down according to their priority of Publication.

No cause must be presented for Hearing, the same Terme that Publication doth pass.

All Proseses to here judgments must be retornable six or seven dayes before the day of Hearing, except it be in the beginning of the term, when the time will not beare it; and the writ must have on the back of it the very day of Hearing.

If the Plainriff appeare not, the defendant is to be dismissed with costs, *Carries Reports 45.* collection of orders in Chancery.

Touching decrees take these insuing Rules.

Every decree must be drawn up as short as with conveniency it may, and not receit the pleadings largely but the sum of ie briefly.

If the decree be made before the Master of the rolls or before any judges, it being drawn, must be first signed by them, and after by the Lords commissioners and then it must be inroled.

The decree must be signed and inroled before the first day after the next *Michaelmas,* or *Easter* Term after the making of it.

Where

Where the Decree concerns Lands or Leases, it must be entred into the Registers Decquet book, within six moneths after the making of it, otherwise it shall not prejudice the Purchasers of the Land.

No Decree shall be binding to any but those who are served with Proceſſe, *ad audiendum iudicium*, or that did appeare *Gratis*.

The Purchaſor that comes in by Conveyance, *Bona fide*, from the Detendant before the Bill exhibited, and that is no Party by Bill or Order, shall not be bound up by any Decree.

But where a man becomes a Purchaſor (*pendente lite*) and without any colour of privity, or allowance by the Court, there it shall regularly binde him; yet in such caſe, if there have been any intermiſſion of the Suit, or the Court be acquainted with the Conveyance, the Court is to give order in it.

No Decree made by this Court can be croſſed, altered, or explained upon a bare Petition onely, and yet hereby it may, for ſome ſpeciall reaſons, be ſtaid for a while, till it can be moved in Court.

A Decree of this Court once inrolled cannot be reverſed or altered but by a Bill of Review, unleſſe it be in caſe of miſcaſting, where the caſe is demonſtrative, and then it may be done by order.

A Decree will binde the perſons, for where any do reſuſe to obey it, this Court will impriſon him untill he do conſorm.

A Decree of this Court doth binde the right and title to Lands and Goods; for this Court by their Order of Sequeſtration and Injunction doth diſpoſe of the Poſſeſſion thereof for ever to him, the Court judgeth to have right thereunto in conſcience.

Where a Decree is to be made upon a pretence
of

of Equity against the Judgement of another Court; this Judgement is first read, and then the decree is not to vacuate the Judgement, but to order the unreasonable party.

The course of the Court is to enforce obedience to their Decrees, and to punish the breach of them.

First, they are to serve the party with the Decree it selfe, under the Seale of the Court; and if he yeild not obedience unto, but stands obstinate, they then proceed to take out of the Court all the Processes of contempt against him, one after another, and the party being taken, is to be straitly imprisoned, and not to be set at liberty till he yeild obedience to it (that is to say) That he perform that part of the Decree, which is presently to be done, and give security to perform that part which is to be done for the future.

Also the Lords Commissioners for his contempt may fine him what they please, and afterwards ex- treat.

Where the Decree is for Land, and the party remain obstinate and wilfull after his imprisonment, the Court doth use to grant an Injunction for the Possession; and this being disobeyed after it is served, and Oath made thereof, the Court doth in that case grant a commission to some Justices, and if need be, a Writ of Assistance to the Sheriff, to put him in possession. See *Caries Reports* 23, 34. 36, 37. *Torbill* 56, & 57. collection of Orders in Chancery.

Where this Injunction is granted for possession of the Land, and the party sits out all the Processes of

of contempt, and cannot be found by the Serjeant at Armes, or make a Rescue, a Sequestration shall be granted of the Land, *Totbill* 197.

This Sequestration is granted sometimes as well of the Goods, as of the Profits of a mans Land, and that for his wilfullnesse in standing out in contempt, and disobedience to the Court; as well where it is for discharge and payment of Debts and Duties, as where the Decree is for the payment of a sum of money, &c. *Totbill* 175, 176.

Concerning contempts.

IN case of contempts upon force, or ill words used upon serving of Processe, or other words of scandall to the Court, if they be proved by *Affidavit*, the party forthwith upon motion will be committed, if the words spoken deserve it.

For other contempts against the Orders and Decrees of the Court, take as follows.

First, an Attachment goes forth upon *Affidavit* made of the contempt.

Then the party being taken is to be examined upon Interrogatories, which is usually upon Motion referred to one of the Masters in the Chancery.

The contemptor coming in *Gratis*, or upon Processe, should give notice to the Clerk of the other side of his Appearance; and if then there be not Interrogatories put in within eight dayes, or being examined, if no Reference be of the Examination, or Commission taken out by the other side, nor witnesses examined to prove the contempt in a Moneth; the contemptor shall be discharged, and shall recover costs, taxed by a Master without any Motion.

If after he hath appeared upon the Contempt; he depart, not examined, he must stand committed till he be examined and cleared, and if it be found, he must clear it, and pay costs ere he be discharged.

Such as stand committed for Contempts upon Attachments, or Commissions of Rebellion, must enter into Bond to attend from day to day, not to depart without leave of the Court, *Caries Reports* 9. 44, 70, 71, 82. Collection of Chancery Orders.

Imprisonment upon Contempts for matters past, may be discharged of Grace, after sufficient Imprisonment, or it may be otherwise dispensed withall in such case.

But where the Imprisonment is for non-performance of any Order of the Court in force, then the person so in contempt ought not to be discharged, except the first obey, onely the court may dispense with the contempt for a time:

Concerning Bills of Review.

A Bill of Reeiew shall not be admitted, except the Decree be first obeyed and performed.

No Bill of Review shall be put in, except the party that prefers it enter into a Recognizance with Sureties, for the satisfying of costs and damages for the delay, if it be found against him.

VVhere a cause is dismissed upon full hearing, and the dismissal signed and inrolled, it cannot be retained again but by a Bill of Review, and that in some speciall cases.

No Bill of Review is grantable but upon Errour in Law, appearing in the body of the Decree it selfe, without Avgment or further Examination of any

any matter of Fact, which might have been had at the time of the Decree, unlesse he shew some new matter which hath risen in time after the Decree, whereof the Plaintiff could not have advantage of before: and then upon oath made that there is a discovery of such new matter, this Bill (by leave of the Court) may be exhibited.

But he that so obtaineth this Bill must first give security by Recognizance to a Master, as is before directed.

Where the Decree is to yeild the Possession of Land, deliver Writings, or to pay money, he must first perform that before a Bill of Review: but if the Decree be to extinguish a Right, convey Land, release a Debt, acknowledge satisfaction, or to cancell Records or Evidences, or the like, it may be staid by the Order of the Court, till the Bill of Revivor be determined.

No VVitneses which either were, or might have been examined upon the former Bill, shall not upon this Bill of Revivor be examined to any matters: collection of Orders in Chancery, *Tohil* 273.

Having now gone through the generall proceedings of Chancery upon Bill and Answer, there are some things which in some cases are essentiall to those Proceeds, which take as follow: and first concerning Injunctions.

THIS is looked upon according to the generall acceptance, as that which makes stay of Proceedings at Common Law, although in many cases it is like

likewise to the end to gain the Possession of Land in some cases it precedes, and in some cases it is subsequent to the Decree, and sometimes by writing, and other times by word of mouth, as when the party who is to be inhibited, is present in Court.

Where it stayes Proceedings at Law, in some cases it gives leave to go to Tryal and Judgement, but stays Execution.

Where the matter of Law is tryed, it bars them from Judgement as the case may be.

Or where there is a Judgment, and that executed, it will stay the money in the Sheriffs hands, after the party is arrested at Law for the money.

This Injunction is commonly procured either upon some Writing, or matter of Record plainly appearing; or upon a very old Debt that hath slept long, Creditor and Debtor being both dead; or in such cases where the Defendant doth not appeare, but sits an Attachment, or if he appears, either answers not the Bill, or confesses so much thereof as is sufficient.

Where either the Defendant is beyond the Seas, or being in the Kingdome, doth absent himselfe, so that he cannot be served, or where upon any pretence he hath gotten time to answer, the Court doth usually in those cases grant an Injunction to stay Suit, till the Defendant doth appear.

Where there is a Commission granted to take an answer in the Countrey, an Injunction will be granted to stay the Defendants Suit at Law, (if any be) till the answer come in, and of this the Defendant must take notice without any serving of it.

Where there is a Verdict at common Law in an Action of Debt, and a Bill be afterwards exhibited for releif, here the money must be deposited in Court, before the Court will grant an Injunction, unless in

some

some cases where some speciall matter in Equity appears by the Defendants answer, or in some former Decree.

VWhere a person priviledged in this Court is sued elsewhere, he may stay that Suit by this injunction.

VWhere Timber is unjustly felled; Ancient Meadow ground plowed up in twenty years before, or for the maintenance of Inclosures kept in for 20. yeares before, there it is grantable according to the case.

VWhere an injunction is granted to quit a possession, it is granted of houses and Land onely, and not of Rent or such like thing, and it is not to be granted before the hearing of the cause, unlesse upon oath, that the Plaintiff was in Possession at the time of the Bill put in, and then onely of that possession he had then, and three years before, and at the time of the motion, and not to be extended to the possession of those from whom he claimes: And this shall not hinder the Defendants Suit in Law, making of a Lease, taking of Distresse, &c. And this Injunction where the Plaintiff delays his Suit is to be dissolved again.

Where it is to stay or remove a Suit by *Certiorari*, Bond must first be given that the Bill hath matter sufficient in it to beare it, and shall be proved true within fourteen dayes after he hath the *VVrit*; and this if he do not in this time, after a certificate of his neglect from the Examiners, it shall be dismissed with costs, and a *Procedendo* granted.

VWhere the injunction is to be obtained by motion for matter in the answer, there the Counsell must put the case in writing to the Court.

VWhere it is granted upon the merit of the cause, or upon speciall cause in Equity, it is to stand till the hearing, unlesse the Plaintiff delay his Suit.

This injunction must be served either on the
party

party himfelfe, his Councellor, Attorney, or Solicitor, &c. as the cafe requires, and the manner of the ferving, it is much like the ferving of a *Subpoena*.

A bare petition only will not difsolve this injunction, nor if it be had by motion, is it to be difolved without motion of the adverfe party.

Where an injunction is granted till the answer be put in, and no order be made to continue it, within fourteen dayes after the answer is come in; in this cafe it fhall be difolved upon the Registers certificate thereof only; and if no motion be made that Term, or at the next generall feal after the Term; to continue it for infufficiency of, or matter confefled in the answer, it is difolved of courfe; fo where it is to ftay a Suit at common Law, and the Plaintiff doth not proceed for three years together.

Where the injunction is disobeyed (if you would force obedience thereunto) upon oath made thereof, all the Proceffes of contempt are to go out againft him, one after another, and being taken, he is to be imprifoned, till he do yeild Obedience to it, or give fecurity to doe it; nor is he to be heard in the Principall cafe, till he yeild Obedience in every thing in the Injunction, *Tothill 107. Caries Reports 112, 113.*

Touching difmiffion, take thefe things following.

THis is prayed by motion, and had upon Plea to the Bill, or hearing of the caufe, and not after Examination of witneffes before hearing, but upon a difcontinuance of profecution, by motion and order of the Court.

Where

Were the Plaintiff discontinues his prosecution after all the defendants have answered, above the space of one Terme, the cause is to be dismissed of course, but after a Replication put in, it cannot be dismissed without an order upon motion.

Where a cause is dismissed upon a full hearing recorded and certified by the Lords commissioners, it cannot be againe retrayned, or a new bill admitted but where there is new matter.

Where the bill is duly dismissed of course or by order, no motion will be heard to retrayne it, till the costs assessed upon the dismissal be paid, and certified from the attorney on the other side, that it is done.

No dismissal nor Retainer upon a dismissal will be granted upon bare petition only.

In cases of dismissal not upon a full hearing, to a new bill this may be pleaded.

But for the causes of dismissal, the court will retaine & dismisse as it doth see cause: See collection of Chancery orders, *Caries Reports* 34. 43. 74. 76. 110.

Touching References, and Reports, take as followeth.

WHere there is a demurrer to the Jurisdiction of the court, there no Reference may be had to a master upon it, but it must be heard before the Lords commissioners themselves.

After examination of witnesses is past, there can be no reference had to a master to end and determine, unlesse it be in case of neere kinne, poverty or consent of parties.

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A refe-

A reference of the state of the case is sparingly granted, unlesse where there is consent of the parties.

The examination of court-Rolls is to be by reference, but there it must be to two masters at the least.

No reference shall be made of the insufficiency of an answer without allegation of speciall causes : See collection of Chancery orders.

The reports of the master upon the Reference must not exceed the warrant of Reference, which is the order of court by which it is referred to him.

After the master hath seen the order, he usually grants out a warrant, which is shewen to the other side, whereby he gives notice of the time of his hearing the cause, where the other side with their counsellours, or sollicitors, may as they see cause attend.

The report it selfe is usually briefe, and with some opinion, if the case be not very doubtfull, and if so, then it must be set forth the speciall case.

No order can be had to confirme the Report, till it be first filed with the Register, under the masters hand and a day given on the other side, for seven dayes at the least, to speake to it in court; and yet where it is not to ground a decree, and it be positive, it is to stand, and process may be taken out for the performance thereof, unlesse the adverse party upon notice thereof, do within eight dayes after (if it be in the terme time) or if the generall scales, motions, or if after within foure dayes of the beginning of the next terme, get it controlled.

Where there is an appeale to the court from Report of a master, the party that doth so appeare must deposite forty shillings with the Register and a day will be set for the judgement of the court

if the court do adjudge it against the Appellor, the other shall have the forty shillings, and What more the court shall judge fit; if otherwise the money shall be restored., See collections of Chancery Orders.

The matters briefly under reference are either insufficient answers, or matters of account.

Where the master upon a reference to him reports the answer to be insufficient, the complaynant may take out two *Subjæna's* against the defendant, the one for twenty shillings costs, and the other to make a better answer.

Touching Orders, and the Register that drawes them.

THe Register being sworne to sit in court, and take notice of all orders the court doth make and and take short notes intheir book, by which to draw up some more full remembrances of that which passed in court.

Where any other shall be made, and the court not informed of the last materiall order, formerly made, no benefit shall be taken by such order as being surreptitiously procured, and to that end the Register doth mention the last former order in the present order.

An order made out of the generall rule, must set downe the speciall reasons of it.

No order shall be explayned by petition, but by publick motion, both parties being heard.

No order but finall Orders and decrees may be received to be entred after eight dayes after the pronouncing of it that day being excluded.

The Register is to keepe cotypes of the orders he

doth deliver, and his hand is to be put to the order before it be entred.

The Register after a hearing, and reference to a treaty, is to set downe in the order of reference, what was the opinion of the court, unlesse the court do direct it to be drawne otherwise.

All orders drawne up by the Register are to be entred under the Registers hand in due time.

The Register is within ten dayes after the end of every terme to certifie the commissioners, what Reference depends in the hands of any master, and how long they have depended, that so if any of them have depended over-long, the court may require an account thereof from the master, and quicken him to a speedy dispatch.

Touching Suits in Forma Pauperis.

THe counsell and attorney assigned for *Paupers* may not refuse, but must attend their businesse unlesse they shew cause to the court, why they cannot so do.

They must alwaies have their order of admission with them, and first move that, before any other motion; and it hinders not, but that they may, if they have any other motion, make it afterwards.

Where the Register finds that he is not a *Pauper* he shall not draw up any order upon the second motion; but the *Pauper* shall loose the fruite of it.

No Councillor, Attorney, or Officer of the court appointed to be for a *Pauper* by the court, is to take any thing of, or contract for any thing with him, and the *Pauper* that can be proved to have

have given or contracted, is to be dispaupered, for ever.

If a *Pauper* sell, or contract for his lute, or any part of it, his bill shall be dismissed, and never after retrayned.

No processe of contempt shall goe out for a *Pauper* untill it be signed by the fix clerk who deals for him, and he must see there the cause for it.

The course to obtayne the admission is by way of Petition, either to the commissioners of the great Seale, or to the master of the Roles, who undercribe it, the party having made Oath that he is not worth five pound, and assignes him counsell and Attorney.

His admission must be shewen the severall offices, where he hath occasion to passe

Touching petitions, for the avoyding the multitude, of idle ones, drawn by persons altogether ignorant of the practice and course of the court, or true state of the petitioners businesse; it is directed, that Petitions before they be presented to the commissioners of the great Seale, or master of the Rolls be shewed to that fix clerke, who is the petitioners attorney in court, or to his depury, and by him approved and subscribed; and for this no Fee is to be taken; but this nor is to be understood of petitions advised, and signed by counsell: Nor of petitions contayning any matter of complaint against the attorney, or his under clerk.

Touching Affidavits.

Affidavits are most generally made before masters of the chancery, but where its for the serving

ving of a *Subpœna*, they are sometimes taken and certified by others.

An *Affidavit* may not be taken against an *Affidavit*, for if it be, the latter is not to be used.

An *Affidavit* ought not to be taken tending to the prooffe or disproofe of the matter in question: Nor may any such matter be admitted, to be colorably inserted into any oath made of the serving of proccesse. See more to this purpose, *Caryes Reports* 63. 81. 82. 84. 85. 88. 98. 99. 103.

The Way of Proceeding against a Priviledged Person.

A Declaration against a priviledged man for debt, or any thing whereof the court holdeth Plea, is to be delivered to one of the six clerks, whome the Plaintiff maketh his attorney, and he thereupon giveth a day (as it is commonly termed) which is a week, (*viz* the whole next retorne) to the defendant to answer, which day is entred in the six Clerks costs book in this manner, (*Roberts against Johnson*) A day is given them from the day of St. Michael in one moneth in a plea of priviledg.

Day being thus given the declaration under the attornyes hand is sent over to the Pety-bag, by one of the said attornyes clerkes, which declaration is briefly entred by one of the clerks there, and likewise the day that is given to the defendant to answer in a Role there, which is called *Rotulum remembranc. Parvæ bagæ*. At which day by the course of the common Law, if the defendant plead not, he is fore-judged the court, but the course of the Chancery hath been of late to allow the defendant a day

of

of Imparlanee, that is, day till the next return after the return given him to answer, which is in this manner.

The Defendant retaineth one or other of the six Clerks, who imparleth for him, which is done in the six Clerks costs Book in this manner, (*Roberts against Johnson*) Imparlanee untill the Morrow of all-Souls, at which day it is sent over to the petty-bag, to be entred into the aforesaid Roll next under the said Declaration.

The said day of Imparlanee being past, another day, *Videlicet*, commonly five dayes in a week (which is commonly called a peremptory day) is given by the Plaintiffs Attorney and entred in the petty-bag as aforesaid, to the Defendant to plead, or else Judgment is to be entred against the Defendant.

If the Defendant plead, his Plea is delivered by his Attorney to his Plaintiffs Attorney, and then if the Plaintiff will proceed to a tryall, he is to joine up the Issue (if he may, for in some cases he cannot) or else the Plaintiff is to reply, and to give the Defendant a day, *viz.* a whole Terme to joine up issue which is given and entred as the day to answer: and if the Defendant by that day joynes not up the issue, Judgment is entred up by *Nihil dicit*, and it is to be noted, that after a peremptory day given, the Defendant cannot pray Oyre of the Bond and Condition, or such like, as of late is used for a meer delay: But if the Issue be joyned up, either by the Plaintiff or Defendant, then is the Record made up, and the same with a *Venire facias* is sent into the Kings Bench to be tryed, as an action there at Issue, and upon Judgment there, Execution is thereupon there awarded.

But if the Defendant refuse or neglect to imparle at the day given him to answer, or to plead, for he

may plead at that day if he will, then is Judgement entred against him, and Execution awarded.

Upon Judgement either by default, or *Nihil dicit*, some of these VVrits of Execution are awarded; if for debt, the Plaintiff may have an *Elegit* by *Westminst. 2. Chap. 18.* or else *Levari facias*, or *Fieri Facias*: and if the Plaintiff cannot levy his Debt and Damages, then he shall have a *Capias ad satisfaciendum*, either for all, or so much as resteth unsatisfied.

The Judgement being satisfied, the Plaintiff by himselfe or his Attorney (if the Defendant do desire it) doth acknowledge satisfaction upon the Judgement in the Petty-bag Office.

It is to be noted, that whatsoever day is given by any of the six Clerks, and by them entred into their Book, worketh nothing, if the same be not entred into the Petty-Bag.

The course used, where the priviledged person sues.

THE Defendant being arrested by an Attachment of Priviledge, at the Suit of a Priviledged man, must retaine one of the six Clerks to be his Attorney, and must put in Baile to the Plaintiffs Action, according to the course of the Court, which is, to appear from day to day, untill the Plea be determined, to satisfy the Plaintiff all such summes of money as the Plaintiff shall recover against him by reason of this Suit: Then the priviledged man putteth in his Declaration, and the proceedings thereupon are the same as before, against the priviledged man:

By the course of the Court the Defendant is to put in foure Subsidy men, or sufficient Sureties (be the

the action never so small) as appeares between *Archibald* and *Burall*, 23 *Eliz.* wherein the Defendant is bound in foure hundred pounds, the sum of the action, and every Suerty in a hundred pounds.

If Judgement be given for a priviledged man in this Court, he may if he will take out Execution against the Defendant as before; but if he will not, then he may take out a *Scire facias* against the Defendant and his Manucaptors upon the Bail, whereupon if Judgement be had upon the *Scire facias*, in the Chancery, Execution is awarded as in the former Actions: But if upon issue joyned, and sent into the Kings Bench, and upon a tryall there, Judgment be given, then is Execution there awarded; and upon satisfaction of the Debt and Damages, the Bill is to be discharged, upon the acknowledgment of satisfaction, as before.

If either the Plaintiff or Defendant upon a Declaration of priviledge, or *Scire facias*, demur in Chancery, the Demurrer being joyned, a day is set down by the Lords Commissioners for arguing thereof before them; And it upon the Argument it fall out to be a *Respondas ouster*, then Judgment is entred thereupon, and if it be against the Defendant, then Execution is awarded, and if against the Plaintiff, then it is, that the Plaintiff shall take nothing by his Writ, or by the Declaration.

But if it be a *Respondas u'tra*, then is the Defendant to pay costs, and a day given for him peremptorily to plead, or Judgment to be entred, *Practice of the Chancery*, 93, 94, 95, 96.

A Table of Fees due unto the six Clerks and other Officers of the Court.

FOr all first, second, or other Copies of al Bills, Answers, and other pleadings whatsoever, as also of all certificates and examinations made or taken, by vertue of any Commission bur of this Court, and of the Interrogatories therewith returned, and also of all Declarations or Proceedings by English Bill, or according to the course of the common Law, and for Copies of records, Rolls, or Evidences, brought in to be copied, or remaining in the said court for every Lease of Paper containing fifteen lines.

l	s	d
0	0	8

For the Inrolling of all Warrants whereby any Patents, Commissions, Licenses, Pardons, Leases, or other Grants whatsoever doe passe by and under the great Scale, after the rate of every Skin so passing the great Scal.

l	s	d
0	2	0

For the Inrolling of all Warrants for all Commissioners for the Peace, for Goale-delivery, for a Liberty for *Oyer* and *Terminer*, for Piracies, for the preservation of the Game of the Swans, and for the commissions for Inquiry sued out for the benefit of any private person, for every of the said commissions

o 1 8
For

For the inrolling of all Warrants for all commissions of appeal, and for the admiralty for every one of them, 0-4

For the Inrollment of every Warrant for every ordinary license, or Pardon of Alienation, 3-4

But if it be of more then ordinary length, then according to the length after the rate of 20 s. the Skin, and not above.

For the Inrolling of all Warrants for all commissions in the nature, of writs, of *Diem clausit extremum*, *mandamus*, *Ideota probanda*, *Lunaticis inquirend. Melius inquirend.* for every of them. 3-4

For the inrolling of the warrants, for every Patent or grant of the custody of any VVard, 8-8

For the inrolling of the warrant for every presentation, Donation, or Revocation, to any Rectory, Vicaridge, Deanry, Arch-deaconry, Chancellorship, Treasurer-ship, or Dignity to any Metropolitically, Cathedrall or collegiate Church, or for any cannonship, or Prebend, in any of the said Churches, or for the Master-ship in any Hospitall or other Ecclesiasticall living, or for the grant of any presentation or presentations, *pro unica vel pluribus vicibus* thereunto, 3-4

For the inrolling of warrants for every, *Mandamus ad installand*, 3-4

For the inrolling of all warrants, for all Licenses for wines, for every life 3-4

Or such Fee not exceeding that proportion, as by the Commissioners shall be set down, formerly they paid although granted for three lives, 6 8

For the inrolling warrants for every pardon of Outlawry, 3-4

For inrolling of the warrants for every Denization, or commission of Bankrupts 3-4

For the writing of every Exemplification, as well of

of Records in the Tower, as of any Records whatsoever, being in their custody, after the rate for every Skin 1-6-8

Of every Clyent for every Term whilst his cause dependeth undetermined, by decree or by dismissal, the termly Fee of 0-3-4

If there were twenty Plaintiffs or more in one Bill they all pay but one Fee for one Term. 0-3-4

But for every three Defendants, accounting the Husband and the Wife but for one person, there is due for their first appearance 0-3-4

And upon the first appearance, if every Defendant appear severally by himselfe, he is to pay the fee of three shillings four pence, but every Term afterwards during the continuance of the cause, there is only the Fee of three shillings four pence the Term, to be paid for all the Defendants that appeared in any Term or vacation, in the same cause.

For a *Subpoena* Writ to answer 0-2-6

If there be three in the Writ, you pay more, 0-6-6

1 For the Attachment 0-2-10

For breaking it up with the Sheriff 0-2-0

For returne of the Attachment 0-0-4

For the proclamation upon the same 0-2-10

For the returne of the proclamation 0-0-4

For the Commission of Rebellion 0-18-2

For the Inrollment of every *liberate* and *Allocate* 0-3-4

The rule which the Plaintiff gives the Defendant to make answer by a certain day, in } 0-0-4
case where the Defendant appeares.

For each rule of publication, after Examination of Witnesses 4d

For entering them with the Register, for each 0-0-4d

The

The Defendants appearance	0-4 6
In which is included the Attornies fee for the Term.	
For the oath made that the answer is true,	0-0-4
The like for every Defendant	0 0-4
For the commission to take the answer in the Country, by <i>Dedimus potestatem</i>	0-7-10
Besides the ingrossing of the Bill, which is included in it, every sheet	0-0-6
For the <i>Subpœna</i> for costs where the Bill is not put in by the Complainant within the time limited	2 6
For a bill of costs, and the entry of it	2 4
A joynt commission to examine witnesses in the Country	7 10
So much the Plaintiff payes the Defendant	6 8
For the Examination of the first witness here before examiners,	0 2 6
For every witness afterwards	0 2 6
For the Copies of the Depositions of any witnesses returned by commission	0 0 3
For every sheet.	
For copies of Depositions taken in the Examiners Office, for each sheet	0 1 0
For the drawing of the Order upon motion, for every side,	0 1 6
For the entering of the order, every side	0 0 6
The Fees of an Injunction in all	1 2 6
For a <i>Subpœna</i> to rejoyne	0 2 6
For a <i>Subpœna</i> to hear Judgment	0 2 6
For a <i>Subpœna super ordinem</i> to shew cause	0 7 2
For a <i>Subpœna duces tecum</i>	0 2 2
For a <i>Subpœna de executione ordinis</i>	1 0 0
For the Rolls to publish witnesses, for each	0 0 4
For entering them with the Register, for each	4
For the copy of Replication, Rejoynder, Sur-rejoynder	

rejoynder, Rebutter, and Sur-rebutter, as for Bill and answer.

Fees for a decree for drawing up, as in case of an Order.

For every Writ of Execution upon any order 68

For drawing and inrolling every decree and dismissal respectively 0 3 4

For every writ of Execution upon any decree after the rate for every Skin 1 6 8

For the writing of every Sheriffs patent, writ of Assistance, writ of discharge, commission to take the Sheriffs oaths, the warrant of Attorney, and the writing of the two oaths, and the Attorneys Fee 1 2 8

For every *Supersedeas* for the discharge of any commission or other writ made in the six Clarks Office 0 6 8

For every *Supersedeas* of priviledge 0 6 8

For every speciall *Certiorari*, or *Procedendo*, *Corpus cum causa* : or *Habeas corpus* 0 6 8

For every bail upon every writ of *Corpus cum causa*, or nature of priviledge 0 2 9

For all manner of *Certioraries*, and *Procedendoes* of course 0 2 0

For every Recognizance or Bond made to the Court, 0 2 0

F I N I S.

*An abstract of the late Ordinance for the Regulating
of the Chancery and the Fees now to be taken.*

FOR the better regualting and limiting the jurisdiction of the High court of Chancery, it is hereby ordered by his highnesse the Lord Protector, by and with the consent of his counsell.

1. That from and after the two and twentieth day of *October*, 1654, there shall be a certaine number of Attornyes in chancery, not exceeding 60. who shall be nominated by the master of the Roles, out of such of the present clerks in the six clerks Office of the chancery or others, as shall be of ability and honesty, (and from time to time in case of death, or removall, to be supplied by his nomination) who being approved by the Lords commissioners, shall be by them sworn attornyes in the said court, and shall receive three shillings foure pence, Termly Fee, which formerly the six clearks received, and shall solicit and manage each clyents cause, without receiving any more for their paines of solicitation, then the said Fee of three shillings foure pence.

2. That from and after the time aforesaid, instead of six clerks in the chancery, there shall be three chiefe clearks, and no more and that *Laurence Maidwell*, *Mathew Pinder*, and *Robert Hales*, Esquires, shall be and are hereby made and constituted the first three chief clerks; and that in case of death, or removall of any of them, the said chief clerks shall be nominated from time to time by the master of the Roles, and approved by the Lord Chancellour, Lord Keeper or Lords commissioners for the time being; and that the persons before named to be the present chiefe clerks, and such

as shall hereafter be named and approved as aforesaid being admitted in such manner as the six Clerks formerly uled to have been, shall do, execute and performe all and every matter and thing which the six clerks heretofore might and ought to have done, except intermeddling in any cause as Attorneys; and that from and after the time aforesaid, no other person or persons shall use or exercise the Office of a six Clark in Chancery; and that the Master of the Rolls do take care, that all the Pleadings, Papers, Books, Proceedings, and all other things belonging to, or filed in the severall Offices of the six Clerks be disposed of and filed in three Offices there, and that the Attorneys aforesaid shall be distributed equally into the said three Offices.

3. That all Bills, Answers, Pleadings, &c. shall be filed with the cheif Clerk in whose Office the Attorney towards the cause for the Plaintiff is. And that each of the cheif Clerks shall have an inspection into the demeanour of the Attorneys in his Office, that they doe their duties, both to the Court and to the Clyent. And where they shall find any abuse, misdemeanour or unfaithfullness in any of them, such cheife Clerk shall acquaint the Court therewith, who shall examine the same, and give reparation to the party wronged, and if they see cause discharge such Attorney from his place.

4. That the first Proceffe in Chancery be a *Subpoena*, which shall be open, and as many Defendants as the Plaintiff shall desire be inserted into the same, paying no more then one shilling and six pence for every *Subpoena* to be thus distributed, six pence for the Seal, and twelve pence to the Officer.

5. That no *Subpoena*, shall be sued out, untill a Bill be filed, and a Certificate thereof brought unto the *Subpoena* Office, under the hand of the cheife Clerk

Clerke or his deputy, for which certificate the said chief clerk shall receive no fee.

6. That in default of appearance, upon oath made of due service, or in default of an answer within the due time (security being put in as is hereafter provided) and attachment with proclamation shall issue to the sheriff, who shall cause the same to be proclaymed at the dore of the defendants dwelling house, Lodging, or last abroad, between the houres of ten in the forenoone, and two in the afternoone, by bayliffs to be nominated by the sheriffs, or by speciall Bayliffs, (that shall not be denyed if required) and the said Baylieffs shall have power for the apprehension of the party (if need shall be) to break open any house or dore where the party is in the day time. Provided, that if the warrant be to speciall Bayliffs, they shall not break open any house or door but in the presence of a constable, who upon the shewing of such warrant is hereby required to be assisting unto the said Bayliffs therein. And if the defendant cannot be apprehended, nor shall appear by the returne of the writ, the Plaintiff may renew the attachment as often as there shall be cause, which attachment shall be in lieu of a Commission of Rebellion, and serjeant at arms,

7 The defendant shall not be compelled to answer untill the Plaintiffe with one surety at least, hath acknowledged a Recognizance before the master of the chancery in ordinary or extraordinary the sum not to be under 20. marks) conditionally to pay such costs to the defendant in that suit, at the court of Cha. shal award if they see cause to award any, for which Recog. there shall be paid twelve pence only and no more, and such masters of the Chancery shall forthwith certifie every such recognizance into the office of the Petty Bag in chancery, to be there

filed, and the officer there shall give a Certificate thereof to the plaintiff, or his attorney, upon request; and for the filing such recognizance, making such certificate and making an Alphabet thereof, he shall have and receive twelve pence, and no more; but where the Plaintiff shall be admitted in *forma pauperis*, no such security is to be required.

8. That where a defendant might answer by Commission in the country, he shall not now be enforced to take a commission, but without taking any commission may answer upon oath, before a master of the Chancery in the Country in like manner, and in such time as if a commission had issued. And that the Lords Commissioners of the great Seale do take care, that for that purpose, there be in every county a convenient number of such of the Justices of the peace resident in that county, as they shall judge to be of the greatest ability and integrity, appointed to be masters of the Chancery extraordinary; and that any such master, or any master in ordinary, after the answer so sworn before him, shall signe the same, and give it in to court himself, or otherwise being sealed up, deliver it to some person to deliver the same in court, and to make Oath that he did receive the same from the hand of such master of the Chancery, and that since the receiving thereof the same hath not been opened or altered.

9. That upon the delivering in the answer, the attorney for the defendant do take care that he be provided with names of persons of commissioners, to be given by him upon a rule given to rejoin.

10. When the answer is put in, the plaintiff shall reply within eight dayes, if the answer come in Terme time, otherwise within foure dayes after the beginning

beginning of the next Terme, unlesse the plaintiff shall within eight dayes after the answer come in, put in exceptions thereunto or procure the cause to be set downe for Hearing on bill and answer, to be heard the next Terme; otherwise the cause to be dismissed without motion, with costs to be taxed by the cheife Clerks.

11. That no copies shall be given out of any Bill, Answer, or their pledges, untill the same shall be filed with the chief clerks; and that each of the said cheife clerk, where such pleadings shall be filed, shall by himselte, and such clerk as he shall appoint, for whom he is to answer, upon delivery out of such pleadings to be copyed, take the name of the attorney, to whom it is delivered, subscribed in a booke to be kept for that purpose; and if any attorney, to whom any pleadings is delivered to be filed shall neglect to file the same, or after filing, if the attorney to whom any pleadings is delivered to be copyed shall neglect to bring back the same in due time, if the same be through negligence, and not voluntary, he shall make satisfaction to the party dammified thereby, as the chief clerks for the time being, upon examination thereof, shall award; but if upon such examination it shall be found that the same was done voluntarily, he shall not only make satisfaction as aforesaid, but shall be expelled the Court.

12. That in case the Plaintiff think fit to except to answer for insufficiency, the Plaintiffs shall deliver the exceptions in writing to the defendants attorney within eight dayes after the answer filed, and shall enter the cause with the Register, and in the same order as they are entered, the same shall be heard by the master of the Rolls, who shall appoint one or more daies in every weeke for that purpose.

and at every sitting shall appoynt his next day of sitting, and how many of the said causes shall be then heard upon exceptions, in the same order as they are entred, on which daies the parties shall attend at their peril, and the master of the Rolls upon hearing thereof shall give such costs as shall be sitting.

13. If a defendant doth appeare and answer insufficiently, and it be so ruled; or shall plead and demur, and the same be over-ruled, then if upon a Rule given he shall not answer within eight dayes, the Plaintiff may proceed in such sort as is before directed in case the defendant had not appeared.

14. That after an answer, if it shall appeare at any time unto the court, that no part of the matter of the Plaintiffs Bill is then proper for reliefe in that Court, the court shall dismisse the Bill with full costs, upon a Bill to be allowed by the chief clerks; but if some particular parts of the Bill be thought fit by the Court to be proceeded in, the court then shall direct the examination and proceedings upon that particular point, and the defendant not be enforced to proceed to examination upon any other matter.

15. The plaintiff the next day after the replication filed, or the same day if he will, shall cause a Rule to be entred for the defendant to rejoyne and joyne in Commission; which if the defendant shall not do within eight daies, then the plaintiff may take a commission *ex parte*, and the defendant shall have no new commission in that cause.

16. That no Wितnesse shall be examined in court but by one of the Examiners themselves, unlesse in case of sicknesse, and that one of the examiners shall Examine the Wितnhsses of the Plaintiffs part, and the other the wитneses of the defendants part

parte, if any be produced to be examined in Court, and that no Clerke in that office shall be a Solicitor upon pain of losing his place.

17. That all Commissions for Examination of Witnesses shall be open.

18. That a Commission to examine Witnesses may be issued out to be executed at any place, as well within ten miles of the city of *London*, as beyond it if the party please.

19 That Commissioners for Examination of witnesses shall take an oath before execution of any Commission to execute the same faithfully, and impartially, which each Commissioner is impowred to administer to the other; and the clerke or clerks attending such Commissioners shall take an Oath, which is to be administred by the Commissioners, to write downe the deposition of witnesses truly and indifferently without Partiality; and a clause shall be incerted into the Commission for that purpose.

20. That the Plaintiffe having the carryage of the Commission, shall at his perill appoint a day and place for execution thereof at least eight days before the returne of the Commission, and give due notice thereof, (unlesse in case where the day and place shall be agreed by the attorneys, on both sides, before the commission go forth) and shall at the day and place appointed produce the commission, and deliver the same to the Commissioners then present, to the end they may execute the same; or in default thereof the plaintiff shall be absolutely concluded from having any other commission, or examining any more witnesses in that cause; but in such case the defendant shall be at liberty to take out the then next Term, one Commission (or more) into severall Countyes (if he see cause) wherein the Plain-

riff may joine, but shall not examine. Nevertheless to prevent delay, the defendant if he please may take out a Duplicat, when any Commission is sued out to examine any witnesses; and the plaintiff shall not give due notice to execute his commission, eight dayes before the return of the commission, the defendant may execute his Duplicate at any time before the returne, giving notice of the time and place where he intends to execute the same, one day at least before the execution thereof.

21. That there shall be no more then two Commissioners at the most for examination of witnesses in any one cause to be executed in *England* or *Wales*, unlesse where one shall be suppressed: and in case either party have any witnesses in *Scotland*, or beyond the seas to examine, setting down the names of such witnesses, and delivering them to the Attorney of the other side, he may take out a Commission within the time before limited, wherein the adverse party may joine, if he will within foure daies after notice, otherwise the Commission shall issue *ex parte*. Provided, that the parties, or either of them, (if the Court see cause) may have severall commissions into severall countyes of the same date.

22. That after the execution of one Commission, no second commission shall be taken out, but by order of the court, and upon *Affidavit* that some materiall witnesses, whose names shall be therein expressed, have beene discovered since the execution of the former Commission; or that some of the witnesses intended to be examined at that commission, and which are materiall, could not be found; or by reason of sicknesse, or like just cause, could not attend that commission, in which case onely those witnesses which shall be named, shall be examined by such second commissions; and the same

same shall issue, and be executed at the charge of the party praying the same, unlesse the other side shall also desire to examine any witnesses by any such second commission; and then he shall likewise set downe their names.

23. That after the returne of the Commission executed, or witnesses examined in court, there shall be but one rule for publication; within which time, if the other side do not shew unto the court good cause to the contrary, Publication shall passe accordingly.

24. That from and after the 22. day of *October*. 1654. no order or direction concerning any cause depending in chancery be made or given, but upon motion in open court; that then both parties concerned, or their counsell, may be heard

25. That the chiefe clerks, and likewise the attorneys do diligently attend in court, and do give an account touching any proceedings in any causes depending in court, as they shall be required.

26. That the chief clearks shall have and receive one moyety of the fees for copying, and for all other matters, and things containd in the table hereunto annexed, such and somuch of the Fees therein set downe, proportionably (with respect to the same, as they are by the said table reduced) as the six clerks formerly did and might receive.

27. That no Injunction be granted, but upon motion in open court, satisfying the court with such matter, which may induce the court in Justice to grant the Injunction but the defendant taking commission, or sitting, an attachment only shall not be a sufficient ground for an Injunction.

28. That no Injunction be granted before the hearing of the cause to stay a suite at law but upon matter confessed in the defendants Answer, mat-

ter of Record, or in writing under hand and scale produced in court.

29. That no injunction granted after a Plea pleaded in Law, or rules given, shall stop a Tryall at Law, or any Pleadings or Proceedings preparatory to a Tryal.

30. That from and after the 23. of *October* 1654. no Injunction be granted to stay the mortgagee from his suite in Law, untill the finall hearing of the cause; but an Injunction may be granted to prevent the mortgagees pulling downe houses, cutting trees, and making other wast and spoile upon the mortgaged land.

31. That all differences touching irregularities in Proceedings, or upon the Rules or course of the Court, shall be determined by the chief Clerks, or any two of them, whome the Attornies on both sides are to attend; and in case either side shall not rest satisfied with their judgment therein, they may appeale to the master of the Rolls, who upon hearing the attornies on both sides (and the chief clerks who made the certificate) if he see cause, shall settle the same and give costs where he shall find the fault.

32. All other references shall be determined by the masters of the Chancery, or Ordinary, which shall be only six in number, to be now, and from time to time appointed by the Lord Protector for the time being, of which six, three shall sit dayly at some certaine publicke place, so long as any such references depend, shall have a sworne register to attend them, who shall in presence of them and the Counsell, read the notes taken in each cause upon any order made, or Report agreed: and the same being so read, shall be subscribed by the masters then present, or any two of them; and afterwards

wards the Report shall be drawn up by the said Register, and subscribed by the same Masters, and certified: And that from and after the two and twentieth day of *October*, one thousand six hundred fifty four, no other person or persons shall exercise the Office of a Master of the Chancery in ordinary.

33. That for every such Report, the party desiring the same, shall pay unto the said Register twelve pence for each side of the Report; and ten shillings upon every such Report to be distributed amongst the three Masters, before whom such cause was heard, for which the said Register is to account unto them.

34. For every Order which the said Masters shall make for new appointments or summons, or of the like nature, the said Register shall have onely twelve pence and no more.

35. That all References made by the Court to the Master, shall be set down by the Register, who draws such order in a Book for publick view, and shall be heard in their order, as they are so referred and set down, without alteration; provided there shall only eight be put in the paper to be heard at one time; and both parties are at their peril to attend the same at the time, or in default thereof, the cause to be proceeded in as if they were present.

36. If any Councell shall mis-inform the Court of any matter contained in the pleadings, proofs, or evidence, whereof he may have the perusal, or of any other matter whereof his Clyent did not inform him, and thereupon obtain an Order, which the Court shall afterwards see cause to discharge; the Counsell so mis-informing, shall be reprehended openly in Court; and before he shall be heard any more in Court, shall pay forty shillings to the party wronged by such mis-information, and twenty shillings to the use of the Lord Protector.

37. But if such information be of matter of fact, whereof the Counsell cannot be otherwise certified, then by the information from his Clyent, Attorney, or Solicitor, who gave such information, shall pay forty shillings unto the party wronged, and shall stand committed by order of the Court, till he pay the same.

38. That from and after the said two and twentieth day of *October*, one thousand six hundred fifty and four, every Attorney shall keep all and every *Affidavits*, whereupon he shall make forth any Writ or Proccelle, in his own custody; and shall shew the same to the Attorney of the other side, and suffer him or any other person to take a copy thereof if he shall require it: And that the Senior Register shall appoint a Clerk of honesty and integrity, to attend in Court, and at the Rolls, and at Seals, who shall take an Oath before the Lord Chancellor, Keeper, or Commissioners for the great Seal, to be faithfull in this Employment; and shall receive into his custody all and every *Affidavit* which shall be read in Court, or upon which any order shall be grounded, and shall duly file the same, and keep an Alphabet thereof. And in case the party at whose instance such *Affidavit* was made, shall have cause to have a copy thereof, he shall pay unto the said Clerk for the same, four pence for the filing, and three pence for every side for a copy thereof; and the other side, or any other person desiring it, may also have a copy at the same rate; and the Register shall have for examining and signing such copy, six pence and no more.

39. That the former rules of the Court for admission of *Paupers*, be duly observed; and in such cases where by the Rules aforesaid, costs are to be paid, in case the party who ought to pay the same be a *Pauper*, the Court shall give order, that unless the

the costs be paid, such person be whipped or sent to the house of Correction.

40. That all causes shall be set down for hearing in order as they were published, without preferring one cause before another, and shall be so presented by the cheif Clerks, without taking any fee for the same; and the causes being so set down, shall be heard in the same order.

41. And that every cause shall be heard the same day on which it is set down for hearing; and for that purpose, the Lords Commissioners, if there be cause, shall sit for hearing such causes in the afternoon as well as the forenoon, except upon Saturdays.

42. That from and after the five and twentieth day of *March* one thousand six hundred fifty and five, all causes shall be heard the next Term after publication; or if they be more in number then may probably be heard that Terme, they shall be set down on certaine dayes next after the Term, and attended and be heard upon those dayes, as if they had been set downe for that Term; and that *Subpœna's* to hear Judgement shall be made returnable upon such respective dayes accordingly.

43. That no releife shall be given in Chancery against a Bond (which is only for payment of money) to be entred into from and after the five and twentieth day of *March*, one thousand six hundred fifty five.

44. That no trust or agreement made or declared after the five and twentieth day of *March*, one thousand six hundred fifty and five, concerning Lands, or any other thing in the realty, shall be received in Chancery, unlesse it be contained in writing, and so averred in the Bill, save in such cases where the possession hath gone along with the party claiming the trust.

45. That

45. That no bill shall be admitted, nor any relief given in Chancery upon averment of any intention of the parties to a deed to be made from and after the five and twentieth day of *March* one thousand six hundred fifty and five, other then what doth appeare by the deed it selfe..

46. That the Chancery shall not give reliefe in any case where the plaintiff can have reliefe at law, unlesse it be for the performance of the thing in kind where it cannot be had at law.

47. That no decree shall be made in Chancery, against an act of Parliament.

48. That from and after the five and twentieth day of *March* one thousand six hundred fifty and five Legacies shall be sued for at the common Law, and not in Chancery.

49. That from and after the said five and twentieth day of *March* one thousand six hundred fifty and five no reliefe shall be given in Chancery, on a mortgage after three yeares forfeiture, or unlesse the suite be commenced within one yeare after the entry and possession of the Mortgage continued, except upon some new agreement between the parties themselves in writing, & except in cases of infancy, Coverture, *non sane memoria*, or beyond seas. In which cases the persons concerned shall commence their suits within two yeares after the disability removed, or in default thereof shall be debarred from any reliefe afterwards; and in case of such new agreement, the like rule to be observed after the time, by such new agreement limited, shall be expired.

50. That in case of mortgages to be made from and after the five and twentieth day of *March* aforesaid, then the mortgagee is in possession by recovery at Law, or otherwise he shall not (except by speciall agreement in writing) be put to an account for the

the yearly profit accrued after such his entry before the suit for redemption be commenced, but the same shall belong to, and be retayned by him without account, if by his answer, or at the hearing he shall elect to take the same in satisfaction of the interest of his money, whilst he had the possession, except the Mortgagor shall rather elect to be concluded by the Mortgagees examination upon Interrogatories concerning the profits by him received.

51. That such mortgagee before the mortgagor be admitted to redeem, shall be paid his whole principall money with damages, and his full costs incurred before his entry, and also after the suite commenced, to be taxed by the chiefe Clerks upon a bill of costs, wherein and in all other cases of mortgagees to be made from and after the time aforesaid, the Mortgagee shall be charged (in case the lands be letten to tennants) with no more then what he did, or might fairely have received without fraud, or his owne will full default: And where the lands are unletten, and kept in his owne hands, with no more then foure fift parts of the true yearly value, But if after entry any casuall profits, by fines upon copy-holds, wood-sales, or otherwise shall be received by the mortgagee above the yearly revenue of the lands mortgaged, then the same shall goe in abatement for principall and interest due before such entry. Provided that where in the cases aforesaid an account shall be, all lawfull taxes and necessary disbursements and allowances shall be allowed to the Mortgagees.

52. That where upon a bill exhibited by a mortgagee, to inforce redemption or to have the estate absolute, a decree passeth, and is signed and inrolled the time thereby limited for the payment of the Mortgage-money with damages, shall not be enlarged without consent of parties, in writing. The

53. That where Lands shall at any time from and after the five and twentieth day of *March* aforesaid, be extended upon any Statute, Recognizance, or Judgment, and an account sought to be had in Chancery; the Tenant by Extent or Elegit, shall not be put to account for more then the extended value, unlessse the Suit in Chancery be commenced within one year after such Extent shall be executed, and possession delivered, and enjoyment thereupon accordingly; and that the same Suit be effectually prolecuted, except in case of Infancy, Coverture, *non sane memorie*, or being beyond the Seas: In which Cases, one year and no more shall be allowed to demand an account in Chancery, after such disability removed.

54. That the Office of Register in Chancery shall not henceforth be executed by Deputies, but that there shall be four Registers of the said Court.

55. That the senior of them shall from time to time be Master of the said Office, and shall have the care, custody and government of the said Office, and of all the Books of Entries, Reports, Certificates, *Affidavits*, and other matters filed there, and also of the Clerks in the said Office; and shall take care that the businesse in that office be done with faithfullnesse and diligence, and that no Fees be taken or required, other then what is contained in the Table hereunto annexed.

56 That in case of death, or removall of the said senior Register, the next in seniority shall succeed in his room; and as often as any Registers place shall be void, the senior Register for the time being, shall make choice of the most able and honest of the clerks in that Office to that place, who being presented to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the great Seal for the time being, and

By

by him or them approved, shall be sworn and admitted.

57. That each of the said Registers shall have and retaine to his own use, the Fees mentioned in the Table annexed, which shall be due for any the matters by him done, bearing his own charge, and his proportion of the Rent of the said Office.

58. That the Lord Chancellor, Lord Keeper, or Lords Commissioners for the great Seal, shall upon complaint to them made concerning any abuse, misdemeanors, or unfaithfullness in any of the said Registers or their Clerks respectively, have power to hear and examine the same, and to order reparation to the party wronged, and also to discharge such Register or Clerk from his place if they find just cause.

59. That the Judgment pronounced upon every hearing, and the rule given on every motion, shall be truly taken, and fairly written by the Register and openly read before another cause or motion be begun; so the end if the same be mistaken, it may be rectified by the Court, and that it be left to the Register afterwards only to add the inducement, or reason of such Judgment or Order, and other formalities requisite.

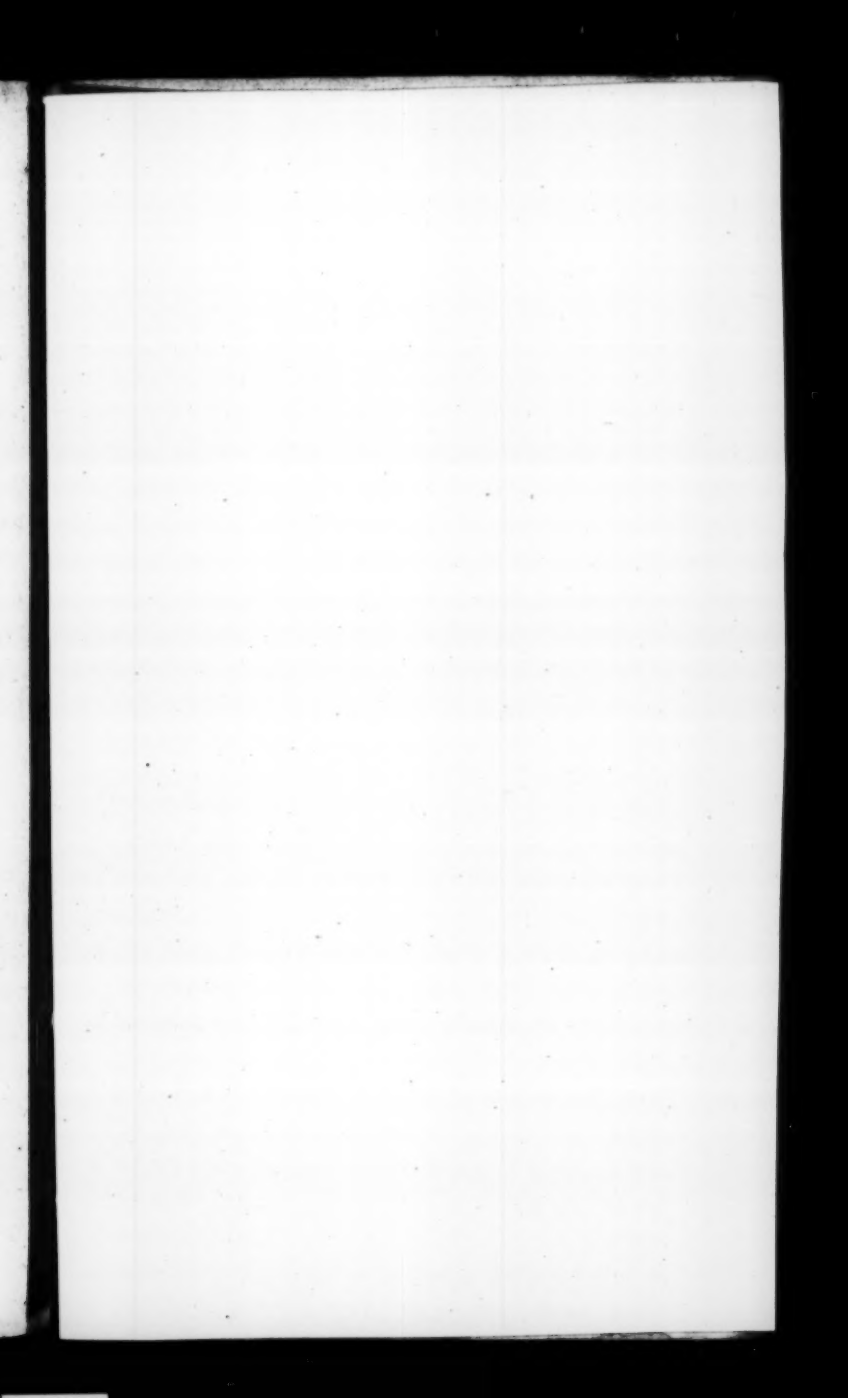
60. Where any Bill shall be dismissed by the rules of the Court, or order before hearing, the Defendant shall have his full costs, upon a Bill of costs to be allowed by the cheif clerks.

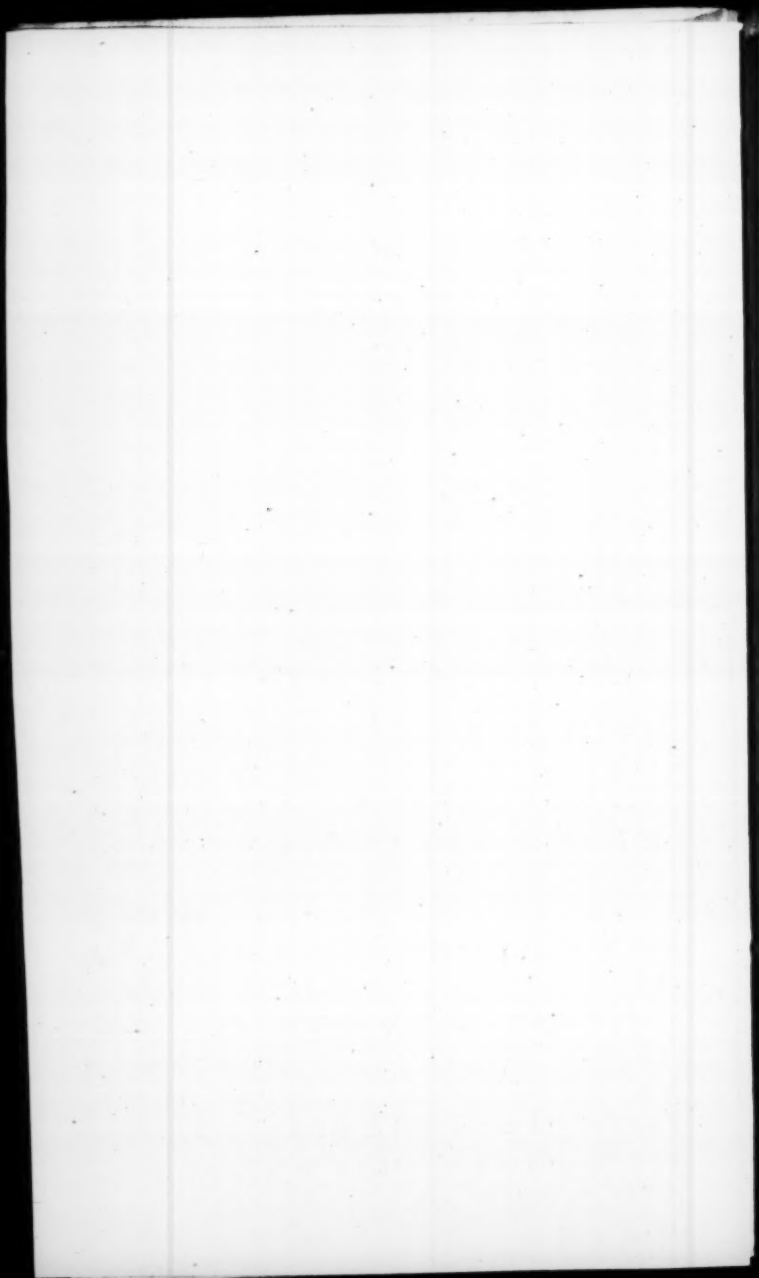
61. Every Plaintiff who shall not in all or some of the matters complained of, be releived by the court upon the hearing, shall pay the Defendant his full costs upon a Bill of costs to be allowed by the cheif clerks, or any two of them; and in case the court upon the hearing shall find the Suit to have been vexatious; the court shall give additionall costs against the Plaintiff, to be pronounced by the court

at the hearing, besides the said costs to be taxed upon the Bill.

62. Every defendant against whome the decree is made, shall pay the Plaintiff his full costs to be allowed, as aforesaid, unlesse the court shall at the said hearing see cause to mitigate or discharge the same upon some speciall reason to be expressed in the order.

63. If any find him or themselves aggrieved by any decree which shall be made in Chancery from and after the two and twentieth day of *October* one thousand six hundred fifty soure, then the party or parties so aggrieved first performing the decree in all points (except in doing such act which extinguisheth the parties right at the common law, as making of an assurance, release, acknowledging satisfaction, cancelling bonds or evidences, or the like) and depositing the sum of fifty pounds in the hands of the senior Register for the time being, to answer full costs and charges in travell, attendance and otherwise, to the adverse party in case such person be not relieved upon a petition to be exhibited in that behalfe to the Lord Chancellor, Lord Keeper, or Lords Commissioners, of the great seale for the time being, within 3. moneths after the Decree made, have first performed so much of the decree as within that time is to be performed, shall have the cause re-heard upon the prooffe and evidence given at the former hearing, and no other; and that upon the preferring of such petition in open court, the Lord Chancellour Lord Keeper or Lords Commissioners, being first satisfied that the decree is performed as aforesaid, and the fifty pounds deposited, shall be next day after under their or two of their hands subscribed to the said petition; signifie their allowance of a re-hearing of such cause, and shall send notice thereof together with





with the said petition to the Courts of Upper Bench, Common Pleas and Court of Excheq. whereupon the said Court shall appoint six of the judges, that is to say, two of each Court (of which six judges, the chief Justice of one of the benches, or chiefe Baron of the Court of Exchequer shall be one) and shall signifye the same to the Lord Chancellour, Lord Keeper, or Lords Commissioners, who together with the said Judges, shal appoint a day for such a re-hearing, at which time the said 6. Judges or the major number of them shall be present, and the said Lord Chancellour, Lord Keeper or Lords Commissioners, together with the said Judges or the major number of them shall re-heare the said cause upon the proofs, & evidence read & given at the said former hearing & no other, & shal have power to make void, alter or confirm the order or decree made upon the former hearing, as they or the major part of them shal think fit. And such order as shal be so by them made, shal be final in the said cause, & in case they shal not see cause to alter the order or decree made upon the former hearing, then they shal order to the adverse party his full costs upon a Bil there of to be made and allowed by the chief clerks, together with such addition of costs for his causelesse vexation, as they shal think fit, Provided that if the decree be for payment of money, the payment of the money into the Court, shall be accounted a performance of the decree, so far as to enable the party to have a re-hearing as aforesaid.

64. That no def which is prosecuted by an officer, clerke or minister of the court of chancery, shall be enforced either to appear in person or in the petty-bag office, or to put in any other bail then he should doe if he were sued in any other court, at common law, by a party not Priviledged.

65. That the master of the rolls, & the masters of Cha. respectively shal not demand, take or receive

any other fees then what are contayned in the table annexed and that every offence in that behalf shall be and is thereby adjudged and declared to be extortion, and shall be punished as extortion,

66. That no Register, chief cleike, examiner, Atto. of the said court, or office for making *Subpoena's*, shall either directly or indirectly, demand take or receive any other fees or sum of money, then what is contayned in the table annexed, for or in respect of any cause depending in the Court of Cha. writs, or proceedings, copys of records or other things there filed, registred or put to the seale: and that every such offence shall be and is hereby ordayned, adjudged and declared, and shall be repured and taken to be extortion and shall be punished as extortion: and that every person and persons so offending & thereof convicted shal be and is, and are hereby ditalled to beare any office of trust or profit in the common wealth.

67. That neither the Lord Chancellor, Lo. Keeper, Lo. Commissioners of the great seale, Master of the Rolls, nor any officer of the said court shall either directly or indirectly take or receive any sum or sums of money, gratuity or reward, so nominating or admitting of any person or to any office or place within his or their disposition in the same court, upon paine of losing his office, and paying double the sum or value of the gratuity or reward so received: the one moyety thereof to the use of his Highn. the Lo. Protector, and the other moyety to the use of the party who shall sue for the same by bill, plaint or information in any court of Record.

And lastly it is ordayned by the authority aforesaid that the chancellor, Keeper, or commissioners of the great seale for the time being, shall according to the times, & in the manner by this ordinance prescribed put in execution all the rules, Lawes, orders, and Directions

rections before mentioned, and take care with all diligence and circumspection, that all the officers ministers, clerks, and servants belonging to the said court do honestly and faithfully perform the duty of their severall and respective places: and if they be found any waies faulty, that they be publickely rebuked, displaced or otherwise punnished according to their desert, that for the future there be no more cause for just complaints from the people.

Fees to the master of the Rolls *l. s. d.*

F or every single perpetuity,	00 02 00
For every double perpetuity	00 02 00
For every grant for life, except wine licenses	00 02 00
For every grant of any Office	00 02 00
For every license for selling wines	00 01 00
For every sheriffs patent	00 02 00
For the Dedimus potestatem to take the sheriffs Oath	00 06 00
For every Exemplifi.	00 06 08
For every cancellation	00 06 08
For every decree and dismissal	00 06 08
For the inroling every deed and Recogni- zance	00 02 00
For every Venire fac. ad triand. &c.	00 06 08
For every writ of Extent	00 06 08
For every Liberate upon an Extent	00 13 04

Fees to the Masters of the Chancery. *l. s. d.*

F or allowance for roabes out of the Hannaper	06 14 00
For oathes upon Affidavits, Answers, and to witnesses to be examined in Court for every oath	00 00 04
For Acknowledgment of deeds and recogni- zance.	00 02 00
For oathes taken to articles for granting of Supplicavits.	00 02 04

For examining all records which are to be exemplified,
for every skin of parchment 2 s.

For every cause upon a reference to the three masters
who shall heare the same 1 s.

Subpœna Office.

For every Subpœna, of what nature soever and La-
bels thereof 10 s.

For renewing the same 6 d.

For the seale to each Subpœna 6 d.

To every counsell under a degree of a Seijeant for a mo-
tion. 1 s.

To every counsell on a hearing. 1 l.

To counsell for the Lord Protector and Serjeants at law
for a motion. 1 l.

And for every hearing 2 l.

Chief Clerks and Attornies.

For every cause to the attorney, the termely fee of. 3 s 4 d.

For an attachment besides six pence for the seale. 1 s 2 d

For the copying of all bills, Pleadings, depositions, re-
cords, rules evidences, remaining in the Court,
Certificates. &c.

For every sheet containyng fiftene lines, and every line
ten words. 4 d.

For every commission to examine witnesses. 4 d.

For every joynyng in such commission 3 s 4 d.

For every injunction 6 s 8 d.

For signing by the Lords Commissioners. 2 s.

For signing by the master of the Roles 1 s.

For a Distingas 3 s 4 d.

For every speciall Certiorare or Procedendo. 3 s 4 d.

For every Habeas corpus 3 s 4 d.

For every Superfedeas 3 s 4 d.

For every speciall Commission. 5 s.

For every writ of Execution of an order 3 s 4 d.

For drawing and inroling every decree or dismissal. if
but one skin 16 s 8 d.

If longer then six pence per sheet afterwards. 6 d

For

The Compleat Attorney.

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For every writ of execution upon a decree directed to the sheriff or Coroner.	6 s. 8 d.
For every Exemplification, every skin	13 s. 4 d.
The chaste wax	4 d.
Signing the Docquet.	1 s.
For enrolement of all patents, Commissions, Licenses, Pardons, and other warrants whatsoever which passe the great seale after the rate of ten shillings for every skin.	10 s.
For every sheriffes patent, writ of assistance, writ of discharge, Dedimus Potest. and the attornies fee.	13 s. 6 d.
For every writ of Audita Querela	10 s.
For every writ of Scire facias.	2 s. 6 d.
For a Superseas of priviledg	3 s. 4 d.
For every mittimus that passeth the seale	3 s. 4 d.
For the transcript after the rate of every skin	13 s. 4 d.
For every search	4 d.
For every writ of Bastardy.	3 s. 4 d.
For three Proclamations.	2 s. 6 d.
For filing every writ whereby one oath or acknowledgement is received of the transcripts of any record thereby certified.	1 s.
For every Dedimus Potestatem, to take an acknowledgement or cancellation of any patent, deed, indenture or Recognizance.	3 s. 4 d.
For writing of every grant, patent, &c. belonging formerly to the six Clerks.	13 s. 4 d.
For every liberate, and every allocate	4 s.
For the enrolement thereof.	1 s. 8 d.
For all writs of discharge of tenths and fifteenths for every of them.	3 s. 4 d.
For every writ of Superseas, for any parliament-man or his servant	3 s. 4 d.
For every writ of expence Milit. & Burgens.	3 s. 4 d.
For every Certiorari of course	1 s.
For every Procedendo of course	1 s.

Registers Fees.

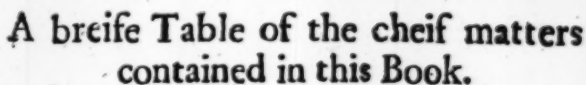
F or the entring of an attachment,	2 d.
For entring of a dismission upon be generall order with costs.	6 d.
For entring any other bill of costs taxed by a master.	2 d.
All ordinary rules to make answer, reply, rejoin,	2 d.
For a rule for publication upon a joint Commission or otherwise.	2 d.
For entry of an appearance upon an attachment, bond, or commandement	2 d.
For the warden of the Fleet upon every such appearance.	1 s. 3 d.
The entry of every Commission to examine witnesses ex parte	4 d.
If it be a joint ordinary Commission	8 d.
The entry of every commission to heare and determine.	1 s.
The Copy of any of these if required	2 d.
The entring of a day given to the sheriff for returning an attachment, or to bring in the body upon a Capi returned	6 d.
The copy of the rule, if required	2 d.
For signing such copy of any rule	2 d.
For a note of a day of hearing	4 d.
For the draught of every order, decree or dismission not exceeding one side and for signing thereof.	1 s. 6 d.
For entry of every such order	3 d.
If such draughts exceed one side, then according to the proportion of 1 s. 6 d. per side	1 s. 6 d.
And for entring, after the rate of three pence per side	3 d.
For any order, decree or dismission not made upon motion or hearing, but by consent under the hands of the parties counsell or Attornies, and for the copies thereof signed by the Register, whereof either side hath one; if it be but one side, the Plaintiff to pay one shilling six pence, and the defendant to pay the like; and	

- and if it exceed one side, then after the same proportion each of them per side. 1 s. 6 d.
- For the entring of such order, for every side 3 d.
- For copying of any order intred, Report, petition, Certificate of Referees, account, Certificate of the chief Clerks being filed. 3 d.
- For signing such copy to the senior Register per side 6 d.
- For every search for order, reports or petition for each yeare. 2 d.
- For a certificate of no cause shewed, signed, to the Register that signed the same 6 d.
- For filing of every report, certificate account, or award 2 d.
- For every decree signed by the Lo. Chancellour, Lord Keeper or lords Commissioners, to whome the same is presented by the Register 2 s. 6 d.
- For every dismissal which he shall procure to be signed 1 s. 8 d.
- For entring of every cause, demurrer or other businesse in the paper of causes to be heard by speciall order or warrant to the deputy Register 6 d.
- For entry of any decree drawn up and enrolled whereby any lands or lease is decreed or charged with any sum of money, annuety, &c. 6 d.
- For a certificate thereof 6 d.
- To the Clerk that files an affidavit, from the party at whose instance it is made (if he come for a copy) for the court of the senior Register 4 d.
- For the copy of such affidavits, for every side to the same Clerk 3 d.
- For Examining and signing such copy to the senior Register 6 d.

Fees of the Examiners.

- For the examination of every deponent, defendant or delinquent at 1 s.
- For the copies of all depositions and interrogatories, for every

- every sheet containyng fisteene lines unwastfully writ-
ten 6 d.
For all certificats upon exhibits 6 d.
For all other certificates whereunto their hands are re-
quired 1 s.
For the exemplification of depositions, for every skin 13 s. 4 d.
For the examination of any copy of depositions with the
Record which is to be given in evidence in any other
Court 3 s. 4 d.
For the examination of every deponent, unto whome the
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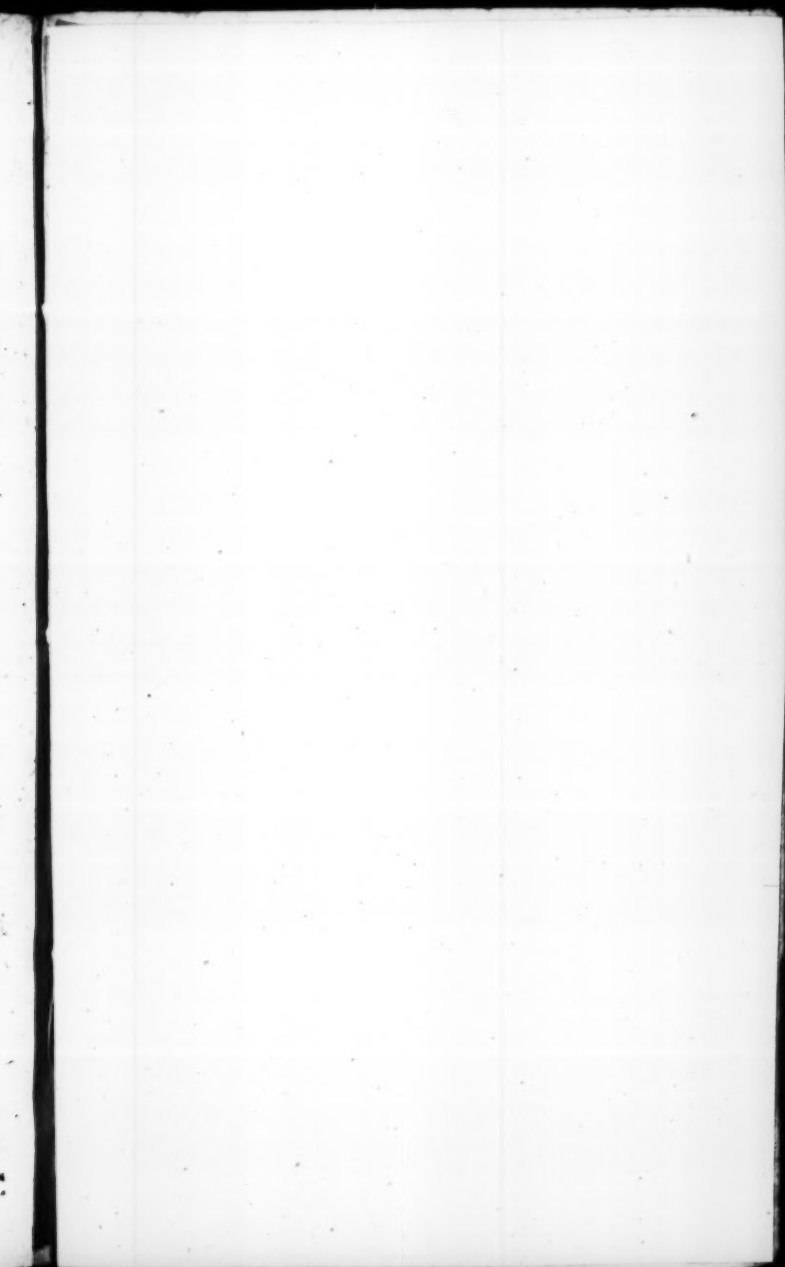
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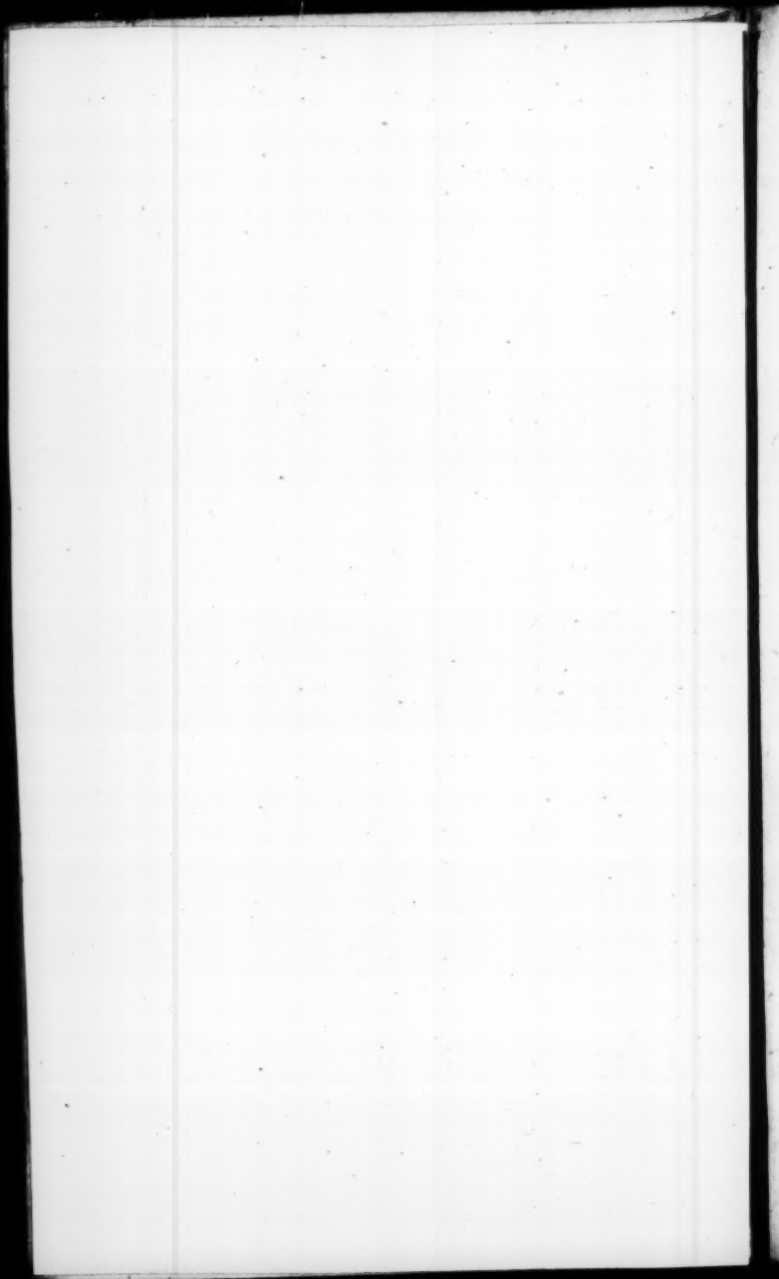
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